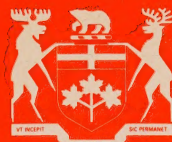


CA 24N

X02

-6505416



ONTARIO

LEGISLATIVE ASSEMBLY

1977

**THE INSURANCE INDUSTRY
FIRST REPORT ON
AUTOMOBILE INSURANCE**

**THE SELECT COMMITTEE
ON
COMPANY LAW**

Tabled in the Legislative Assembly
by

VERNON M. SINGER, Q.C., M.P.P.
CHAIRMAN



ONTARIO

LEGISLATIVE ASSEMBLY

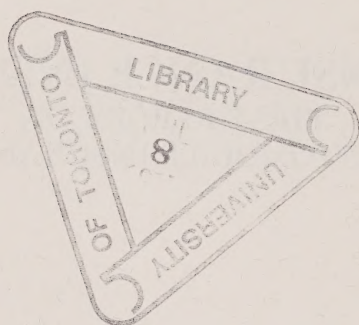
1977

THE INSURANCE INDUSTRY
FIRST REPORT ON
AUTOMOBILE INSURANCE

THE SELECT COMMITTEE
ON
COMPANY LAW

Tabled in the Legislative Assembly
by

VERNON M. SINGER, Q.C., M.P.P.
CHAIRMAN

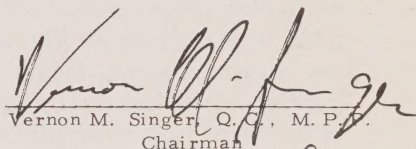


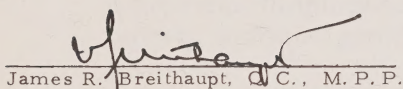
LETTER OF SUBMISSION

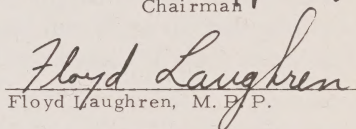
TO: The Honourable Russell D. Rowe,
Speaker of the Legislative Assembly of the
Province of Ontario

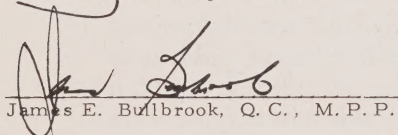
Sir:

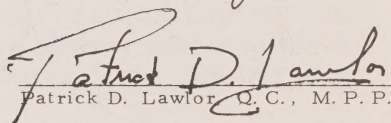
We, the undersigned members of the Committee appointed by the Legislative Assembly of the Province of Ontario on May 25th, 1976 to enquire into and review the law relating to the business of insurance companies in the province, have now the honour to submit the attached First Report on automobile insurance.

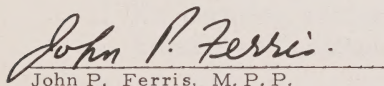

Vernon M. Singer, Q. C., M. P. P.
Chairman

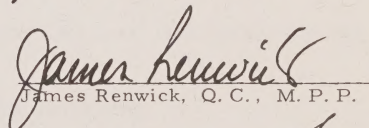

James R. Breithaupt, Q. C., M. P. P.

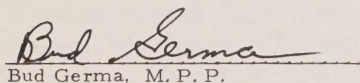

Floyd Laughren, M. P. P.

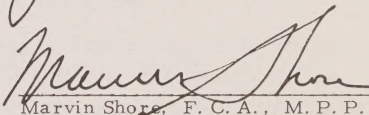

James E. Bullbrook, Q. C., M. P. P.

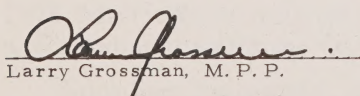

Patrick D. Lawlor, Q. C., M. P. P.

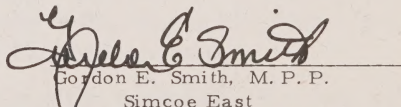

John P. Ferris, M. P. P.

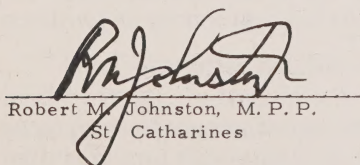

James Renwick, Q. C., M. P. P.

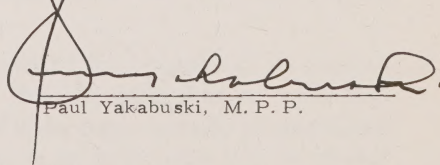

Bud Germa, M. P. P.


Marvin Shore, F. C. A., M. P. P.


Larry Grossman, M. P. P.


Gordon E. Smith, M. P. P.
Simcoe East


Robert M. Johnston, M. P. P.
St. Catharines


Paul Yakabuski, M. P. P.



Digitized by the Internet Archive
in 2022 with funding from
University of Toronto

<https://archive.org/details/31761114660228>

INTRODUCTION

The Select Committee on Company Law was reconstituted on May 25, 1976 under the following terms of reference in which the Committee was appointed:

“to continue the enquiry and review of the law affecting the Corporations in this province as reported on by the Select Committee of this House appointed on June 22, 1965 and re-appointed on July 8, 1966, on July 23, 1968 and December 17, 1971 and to, in particular, enquire into and review the law relating to the business of insurance companies in the province including, but not restricted to,

- (a) the incorporation, licensing, regulation and supervision of insurers as joint stock companies, mutual corporations, fraternal societies, mutual benefit societies, exchanges, syndicates of underwriters and rating bureaus carrying on all classes of insurance business in this province, mergers, amalgamations and reinsurance of liabilities, reporting to shareholders, policyholders and members, their solvency, liquidity and financial requirements, the purposes, scope and functions of their returns, reports, statistical gathering, and the basis for their rates and premiums;
- (b) automobile insurance contracts and, in particular, the provision of accident benefits, fire insurance, life insurance, accident and sickness and marine insurance contracts and generally insurance contracts in this province;
- (c) the licensing, regulation and supervision of insurance agents, brokers and adjusters; and
- (d) the marketing of insurance in this province.”

When appointed, the Committee was composed of thirteen members, as follows: Mr. Singer (Chairman), Messrs. Breithaupt, Bullbrook, Germa, Grossman, Hodgson, Johnston (St. Catharines), Laughren, Lawlor, Renwick, Shore, Smith (Simcoe East) and Yakabuski. On October 26, 1976, Mr. Hodgson resigned and, by order of the House, Mr. John Ferris was appointed to fill the vacancy that had been created.

Since first constituted, the Committee has tabled five Reports, all resulting in enabling legislation.

The Committee quickly became aware of the breadth of its current field of study. Indeed, it was apparent that the field was so wide that some form of segmentation was essential if the topic were to be examined with care and thoroughness. A preliminary enquiry soon indicated that the business of insurance was readily divisible into the business of general

insurance and that of life insurance. It was, therefore, decided that attention should first be focused on the field of general insurance and that investigations of life insurance matters ought appropriately to be deferred for later consideration. It was agreed that priority should be given to the investigation of automobile insurance because of its urgent and pressing problems, and also because an investigation of automobile insurance would provide an insight into many problems facing other types of general insurance.

Even within the limited field of automobile insurance, the Committee has found such a variety of problems to consider that it has been forced to set certain priorities in the choice of problems to deal with and in the order of their consideration. As an examination of this Report will indicate, the Committee has chosen to limit its attention for the present to the consideration of problems and the presentation of recommendations for an all-embracing program for the spreading of motor accident losses as broadly as possible for the protection of the Ontario community generally and for the protection particularly of the users of the roads. On the other hand, the Committee has had to defer for subsequent consideration many issues in automobile insurance such as that of the governmental presence in the insurance system as a regulator and supervisor and as a provider of insurance coverage. It is the Committee's emphatic intention to deal with these matters thoroughly in its next report. By following this order of business the Committee will have dealt with some of the most pressing problems in this Report and will have deferred these other issues until the Committee is fully informed about them. It is also noteworthy that many of the topics dealt with in this Report would be as relevant to a system of government-run insurance as they are to industry-operated automobile insurance.

It is the Committee's intention to continue its studies and to submit subsequent reports on other aspects of the business of general insurance and of life insurance.

Since its most recent reconstitution on May 25, 1976, the Committee has held sessions in Ontario on 74 days. On October 6, 1976 sub-committees sat in Toronto, Ottawa, Sudbury and London, Ontario. There have been over 100 witnesses before the Committee, including some 60 persons with whom the Committee conferred during its overseas sessions. A list of witnesses is set out in Appendix A and the Committee wishes to thank them all for their assistance. The Committee has also received a vast mass of exhibits, submissions, briefs and other documents.

In September 1976, when the Committee travelled to the United Kingdom, where it sat for a further six days, it conferred with leaders in the general insurance field from the government, business and academic

worlds. Immediately after its sessions in the United Kingdom the Committee proceeded to Bern and Zurich, Switzerland, for three further days of sittings. Members had the opportunity of discussing automobile insurance matters with senior representatives of industry, government and the European academic community. The Committee wishes to express its appreciation to all of the experienced people, both in England and Switzerland, who gave unstintingly of their time and experience during these sessions.

The Committee has also benefited from the experience of two other Canadian provinces, Alberta and New Brunswick. Representatives of the governments of each of these provinces came to Toronto to appear before the Committee to discuss problems of automobile insurance that had arisen in their respective jurisdictions and the solutions that they had developed. In the case of Alberta, the Committee is grateful to Messrs. James Fisher and Paul Galway, who are respectively the secretary and a member of the Alberta Automobile Insurance Board. In the case of New Brunswick, the Committee extends its thanks to Mr. Paul F. Kierstead, the Superintendent of Insurance for that province, and Mr. T. O. C. Makin, the Director of Planning and Research of the Ministry of Justice and Consultant to the New Brunswick Public Utilities Commission.

In addition to those who appeared before the Committee, our business consultants, Woods, Gordon & Co., interviewed a great many persons representing the Superintendent's Office, the Insurance Bureau of Canada, the Insurers Advisory Organization, the Facility, the Independent Insurance Agents and Brokers of Ontario, individual insurance companies, adjusters, appraisers, other government departments and special interest groups concerned about the automobile insurance system in Ontario, all of whom were most co-operative in assisting with the research work.

The Committee was particularly eager to benefit from contributions and comments from members of the public of all backgrounds, not limited to those with expertise within the insurance industry. Accordingly, advertisements were placed in the press and special invitations were extended generally to members of the public to appear, to submit briefs, and generally to assist the Committee. These advertisements received a generous response and the Committee is grateful to all of those who tendered their assistance. In order to encourage further contributions from the public at large, the Committee conducted special sessions during October 1976 in London, Ottawa, Sudbury and Toronto. Presentations and briefs from members of the public were received and submissions were heard from many people who attended these sessions.

The Office of the Superintendent of Insurance of Ontario has given unstintingly of the time of its staff and they have made a major contribu-

tion in assisting the Committee. Mr. Murray A. Thompson, Q. C., Superintendent of Insurance of Ontario, has been of special help, as have Mr. Lear P. Wood, Director of Insurance Services, Mr. Marshall P. Dawson, Co-ordinator of Automobile and Casualty Insurance; Mr. Ernest H. Miles, formerly the Registrar of Agents, Brokers and Adjusters and now the Director of the Motor Vehicle Accident Claims Fund; Mr. Robert Brewerton, C. A., formerly Director of Financial Examination Services; Mr. Wallace Couton, Director of the Investigative Programme; Mr. Thomas Tristram, Complaints Officer; Mr. Martin Crutcher, Assistant Chief Examiner of General Insurance Companies, and Mr. Joseph Barrows, Departmental Counsel.

A debt of gratitude is also owed to Professor Allan Linden for his assistance to the Committee.

The Committee is very much indebted to our Consultants, Woods, Gordon & Co., who did research and reported to the Committee by way of five Reports. These Reports Nos. I, II, III, IV and V will be placed in the Legislative Library along with a copy of this Report. Mr. N.A. Gow, B.Sc., and Mr. R. Paul Boddy, C.A., representatives of Woods, Gordon & Co., have attended all meetings and their assistance and guidance have been invaluable.

The Committee would also like to express its sincere appreciation to our Counsel, Mr. R. George Ness, Q.C., of the firm of Ness & Winters, for his guidance during our meetings and for the writing of this Report. His ability and his continued attention to the tasks of the Committee have contributed greatly to this Report.

The Committee's very special gratitude goes to Mrs. Frances Nokes, who has been the Clerk of the Select Committee since it was first created. Her loyalty and her ceaseless efforts have, as ever, been invaluable to the Committee.

Our gratitude is also due to Mrs. Dorothy Gibbs who has helped so ably with the myriad details involved in the publication of this Report.

PROVINCE OF ONTARIO
LEGISLATIVE ASSEMBLY
SELECT COMMITTEE ON COMPANY LAW

THE INSURANCE INDUSTRY
FIRST REPORT ON
AUTOMOBILE INSURANCE

TABLE OF CONTENTS

	Page
Letter of Submission	i
Introduction	iii
PART I PRELIMINARY	
Ch. 1 The Motor Vehicle System in Ontario	3
Ch. 2 The Role of Automobile Insurance in a Mobile Society	17
PART II THE STANDARD AUTOMOBILE POLICY	
Ch. 3 An Overview of the Standard Automobile Policy ..	37
Ch. 4 The Application Form	45
Ch. 5 Policy Section A — Third Party Liability	51
Ch. 6 Unlimited Third Party Liability Coverage	55
Ch. 7 Policy Section B — Accident Benefits Coverage ...	65
Ch. 8. Policy Section C — Loss of or Damage to The Insured Automobile	77
Ch. 9 Minimum Collision Deductibility \$250	81
PART III PREMIUMS	
Ch. 10 How Total Premium Requirements are Determined	87
Ch. 11 How Individual Premiums are Set: The Classification System	99
Ch. 12 Risk Selection	109
Ch. 13 Closing the Gap in The Availability of Insurance Facilities	115
Ch. 14 Recommendations About Premiums, Ratemaking And Underwriting	123

PART IV CLAIMS

Ch. 15	Adjusters and Adjusting	131
Ch. 16	Appraisal Centres	139
Ch. 17	Reducing Repair Costs: Automated Appraisal Systems	143
Ch. 18	Reducing Repair Costs: The Thatcham Experience	147
Ch. 19	Medical Costs and O.H.I.P. Subrogation	153
Ch. 20	Reducing Losses: Driver Review Boards	157
Ch. 21	Compensating The "Guest Passenger"	159
Ch. 22	Naming Insurers As Defendants	163
Ch. 23	Inevitable Accident	165

PART V COMPULSORY THIRD PARTY LIABILITY INSURANCE

Ch. 24	The Principle of Compulsory Third Party Liability Insurance	173
Ch. 25	Enforcing Compulsory Insurance The Irrevocable Policy	177
Ch. 26	Compensating The Victim of The Uninsured Driver: The Motor Vehicle Accident Claims Fund	179

PART VI THE AUTOMOBILE INSURANCE INDUSTRY IN ONTARIO

Ch. 27	The Insurance Companies	185
Ch. 28	The Automobile Insurance Distribution System: Agents, Brokers and Sales Personnel	211

PART VII SUMMARY OF THE REPORT

Ch. 29	Conclusions and Recommendations	221
Ch. 30	Topics For Subsequent Consideration	241

APPENDICES

A	(referred to in the Introduction)	247
B	(referred to in Chapter 3)	253
C	(referred to in Chapter 8)	255
D	(referred to in Chapter 10)	257

E	(referred to in Chapters 10, 11, 12 and 13)	263
F	(referred to in Chapter 20)	315
G	(referred to in Chapter 20)	317
H	(referred to in Chapter 20)	323
I	(referred to in Chapter 25)	325
J	(referred to in Chapter 27)	331
K	(referred to in Chapter 27)	341
L	(referred to in Chapter 27)	345
M	(referred to in Chapter 27)	361

PART I
PRELIMINARY

CHAPTER 1

The Motor Vehicle System in Ontario

One of the most striking phenomena of the twentieth century is the development and use of the automobile. In order to facilitate its use, and the immense changes in transportation systems that have come with it, governments have established road systems that are comparable in magnitude to any of the engineering or construction achievements of history. The advantages that have accrued to society are too apparent to need comment.

With the advantages, however, have come disadvantages that are at least equally obvious. Among these are the enormous losses resulting from the combination of motor vehicle and road that seem inevitably to continue, year by year. These losses are both to person and to property. Those who suffer such losses include the owners and drivers of motor vehicles, passengers and pedestrians, shippers of goods and owners of other damaged property.

It is essential to recognize the magnitude of this phenomenon — this involvement of drivers, vehicles, roads and accidents — if one is to appreciate the problems of the insurance system that has evolved to service it. This chapter therefore describes in detail these components of the motor vehicle system in Ontario.

Drivers

During the period from 1950 to 1975, Ontario's population increased by 84 per cent, — from 4,471,000 to an estimated 8,226,000.¹ During the same period, the number of licensed drivers in the province rose over 200 per cent, from 1,366,388 to 4,160,623.² In 1975, 70 per cent of the population over 16 had a driver's licence. Substantially fewer of the very young and very old had drivers' licences and a correspondingly larger proportion of the 22 to 54 year olds were licensed, as Illustration I shows. A greater percentage of men had drivers' licences than women, in all age groups. Overall, 86.6 per cent of men over 16 compared with 54 per cent of women of the same age group were licensed. For the future, any increase in licensed drivers as a proportion of total population is likely to come from more women obtaining licences, since almost all men in the 25 to 65 age group already have licences and people over 65 are not likely to obtain a licence for the first time.

1. *Estimated Population of Canada by Province*, Statistics Canada, 91-201, 1975.

2. *Driver Licensing Office Statistics, 1975*, Ministry of Transportation and Communications, Ontario (unpublished).

Illustration I
LICENSED DRIVERS BY AGE GROUPS AND SEX AT 1975 YEAR END

Age Group	Male	% of Men With Driver's License by Age Group	Female	% of Women With Driver's License by Age Group	Total	% of Total Population in Age Group With Driver's License
16-19	185,320	57.4%	104,790	33.8%	290,110	45.8%
20-24	325,139	80.6	225,447	61.4	550,586	74.9
25-34	620,515	95.2	452,279	60.9	1,072,794	82.8
35-44	469,752	95.4	320,027	67.9	789,779	82.0
45-54	432,340	93.5	273,246	58.7	705,586	76.0
55-64	295,433	90.2	169,927	49.2	465,360	69.1
65 and over	202,114	68.1	84,294	20.4	286,408	40.3
TOTAL	2,530,613	86.6%	1,630,010	54.1%	4,160,623	70.1%

Source: Ministry of Transportation and Communications.

It is noteworthy that the proportion of drivers in the 16 to 19 age group has increased only slightly in recent years, from 6.3 per cent of licensed drivers in 1967 to 7.0 per cent in 1975. Drivers in the 20 to 24 age group have increased in similarly slight proportion from 12.8 per cent to 13.2 per cent over the same period.³

The annual growth in the number of licensed drivers has varied between 3 per cent and 5 per cent in recent years and in 1975 it was 4.7 per cent. On a long-term basis the *rate* of growth is declining slightly since, as described, the percentage of the population with a driver's licence may be approaching the maximum.

Illustration II
ONTARIO MOTOR VEHICLE REGISTRATIONS*

Year	Passenger	Truck, Tractor and Bus***	Dual Purpose	Motor Cycle	Total	% Increase
1961	1,686,149	322,882	108,295 #	8,944	2,126,270	
1962	1,718,413	329,706	121,706 #	7,323	2,177,148	2.4
1963	1,790,788	333,701	136,090 #	7,741	2,268,320	4.2
1964	1,877,443	342,357	151,085 #	10,334	2,381,219	5.0
1965	1,976,625	352,914	163,071 #	24,070	2,516,680	5.7
1966	2,063,754	370,026	171,735 #	37,959	2,643,474	5.0
1967	2,134,287	381,981	178,057 #	42,941	2,736,366	3.5
1968	2,238,298	396,846	187,618 #	47,826	2,869,588	4.9
1969	2,308,743	412,196	192,975 #	39,876	2,953,789	2.9
1970	2,376,435	426,307	199,606 #	45,251	3,047,599	3.2
1971	2,497,307	443,982	215,747 #	52,826	3,208,862	5.3
1972	2,611,998	479,782	236,937 #	57,727	3,386,444	5.5
1973	3,002,091	519,088	**	62,200	3,583,379	5.8
1974	3,204,234	550,726	**	71,205	3,826,165	6.8

* Totals do not include trailer permits

** Included with passenger vehicles

*** Estimated

Station Wagons and similar vehicles are included in this category

Source: Ministry of Transportation and Communications.

3. *Driver Licensing Office Statistics, 1975*, op. cit.

Motor Vehicles

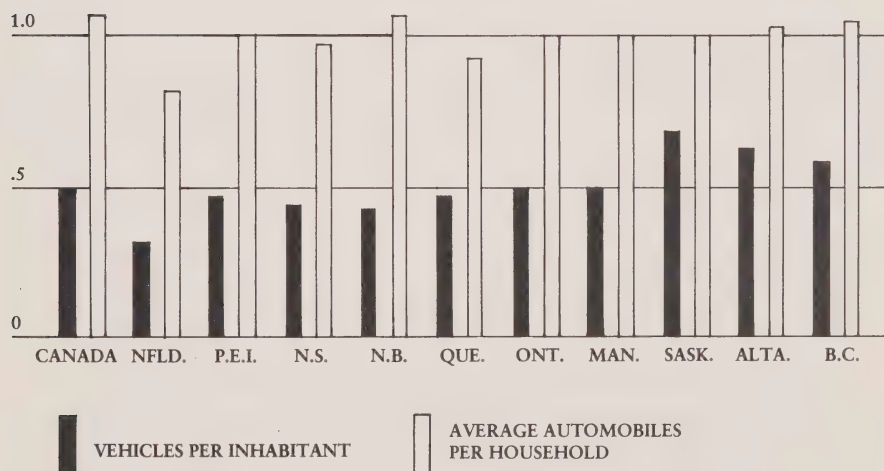
The growth in the number of motor vehicles has been even more rapid than that of licensed drivers. Actual growth is shown in Illustration II.

The number of vehicles per licensed driver has increased from .88 in 1961 to .96 in 1975.⁴

There were 3,826,165 motor vehicles registered in Ontario at the beginning of 1975, excluding trailers. Automobiles were the most numerous, comprising 83.7 per cent of these vehicles, followed by trucks and buses, which were 14.4 per cent of the total, while motorcycles and mopeds comprised only 1.9 per cent of all vehicles. This distribution has changed very little over the years, with only a slight increase in the proportion of motorcycles and mopeds since 1950.

In 1974, Ontario had about the same number of vehicles per inhabitant as the Canadian average. Illustration III indicates that Ontario's ratio was higher than that of the Eastern provinces and lower than that of the Western provinces on a per capita basis, and on the basis of the average number of automobiles per household.

Illustration III
MOTOR VEHICLE REGISTRATIONS IN CANADA



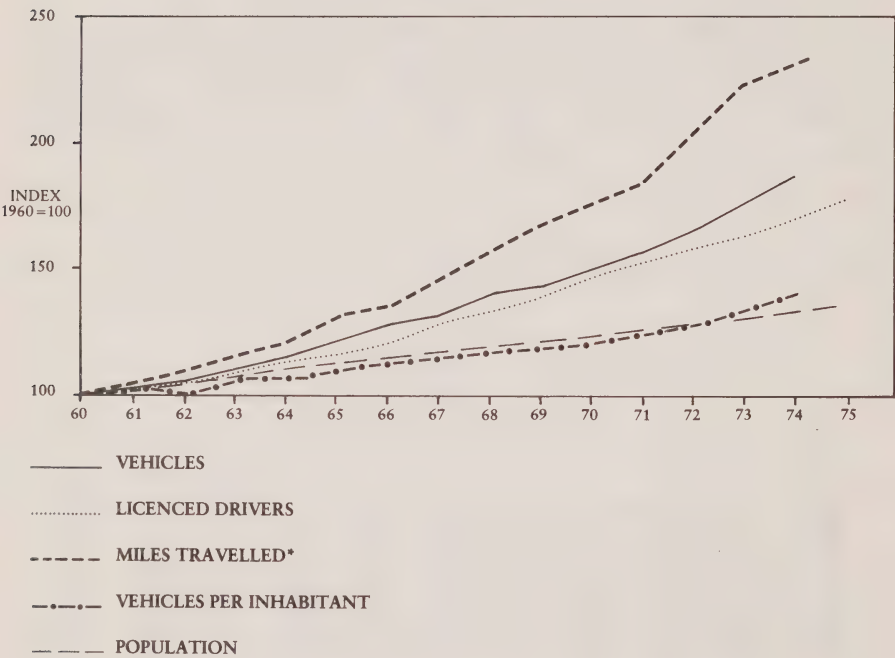
SOURCES: THE MOTOR VEHICLE, PART 3, REGISTRATIONS, STATISTICS CANADA 53-219
ESTIMATED POPULATION OF CANADA BY PROVINCE, STATISTICS CANADA 91-201
HOUSEHOLD FACILITIES AND EQUIPMENT, STATISTICS CANADA 64-202

4. *Ibid.*

Roads

Ontario residents have used their motor vehicles to an increasing extent over recent years. Mileage travelled increased 133 per cent between 1960 and 1975 and reached an estimated annual total of almost 40 billion miles.⁵ As Illustration IV shows, the number of miles travelled annually has increased more rapidly than the number of registered vehicles or licensed drivers, suggesting that Ontario drivers are using their vehicles more frequently to go longer distances.

Illustration IV
GROWTH IN VEHICLES, DRIVERS, POPULATION
MILES TRAVELLED AND VEHICLES PER INHABITANT, 1960-1975
IN ONTARIO



*BASED ON MOTOR VEHICLE FUEL SALES AND AVERAGE
MILES PER GALLON

SOURCES: MINISTRY OF TRANSPORTATION AND COMMUNICATIONS
DATA, THE MOTOR VEHICLE, STATISTICS CANADA 53-217

Ontario had 97,780 miles of roads in 1975, including 801 miles of freeways, 9,009 miles of King's Highways other than freeways, 3,042

5. *The Motor Vehicle, Part I: Rates and Regulations*, Statistics Canada, 53-217. and *Motor Vehicle Accident Facts, 1975*, Ministry of Transportation and Communications.

miles of secondary highways and 84,928 miles of other roadways, including county, township and regional municipal roads as well as city, town and village streets.⁶ Some 40,820 miles of these, i.e. 42 per cent, are paved and the remainder are gravel, earth or other materials. Illustration V outlines these mileages, the accidents, miles travelled and accident rate for the four types of roadway. Of particular note is the large volume of traffic and relatively low accident rate for freeways.

Illustration V
PROVINCIAL ROADWAYS — MILES AND ACCIDENTS 1975

	Miles	Million Vehicle Miles	Million Vehicle Miles Per Mile of Roadway	Accidents	Accident Rate (per MVM)
Freeways	801	7,654	9.6	12,795	1.7
King's Highways (except Freeways)	9,009	9,720	1.1	27,561	2.8
Secondary Highways	3,042	335	0.1	1,372	3.8
Other Roadways	84,928	22,034	0.3	171,661	7.8
PROVINCIAL TOTAL	97,780	39,743		213,389	5.4

Source: Unpublished data from the Traffic Control Office,
Ministry of Transportation and Communications,
letter of September 27, 1976.

Accidents

Illustrations VI and VII present statistics on motor vehicle traffic accidents for all provinces. They show that Ontario had the third lowest number of accidents per mile travelled but only the fourth lowest number of accidents per 100,000 vehicles in 1974. While it has fewer accidents and deaths per million miles, Ontario has had the second worst ratio of casualties by distance travelled. This high casualty rate is even more apparent when casualties per 100,000 registered vehicles are compared for the provinces. The Ontario rate of 2,540 casualties per 100,000 registered vehicles was more than 20 per cent higher than the national average and was the worst in the country.

On the other hand, on the basis of miles travelled, Ontario has fewer accidents, fatal accidents and deaths than the Canadian average. Furthermore, on a per vehicle basis, Ontario has fewer fatal accidents, fewer deaths, and a lower total number of accidents but a higher number of injuries, than the Canadian average. These latter figures may have more significance to the subject matter of this Report since the insurance system operates on a per vehicle basis.

6. Unpublished data from the Traffic Control Office, Ministry of Transportation and Communications.

Illustration VI
MOTOR VEHICLE TRAFFIC ACCIDENTS IN CANADA 1974

	Estimated Vehicle Miles (^{000,000})	Fatal Accidents Per 100,000,000 Miles	Deaths Per 100,000,000 Miles	Casulties Per 100,000,000 Miles	Total Accidents Per 100,000,000 Miles	Deaths Per 100,000 Population
CANADA	105,060.0	5.0	6.0	230	590	27.9
Newfoundland	1,755.9	5.6	6.7	150	640	21.5
Prince Edward Island	506.1	7.5	8.3	150	500	35.9
Nova Scotia	3,349.1	6.7	8.0	130	560	32.8
New Brunswick	2,941.0	7.7	9.8	170	470	43.0
Quebec	27,387.8	5.7	6.9	200	580	30.6
Ontario	39,442.4	3.7	4.4	260	520	21.5
Manitoba	4,327.8	3.8	4.6	260	870	19.8
Saskatchewan	4,261.3	5.5	7.2	240	580	33.7
Alberta	9,396.2	4.9	6.1	160	710	33.1
British Columbia	11,139.2	6.5	7.6	270	760	34.9

Source: Motor Vehicle Traffic Accidents 1974, Statistics Canada 53-206, May, 1976.

Illustration VII
MOTOR VEHICLE ACCIDENTS IN CANADA, 1974

	Registered Vehicles	Average miles travelled per Vehicle	Fatal Accidents per 100,000 registered Vehicles	Deaths per 100,000 registered Vehicles	Casualties per 100,000 registered Vehicles	Total Accidents per 100,000 registered Vehicles
CANADA	11,002,003	9,549	47.3	57.2	2,090	5,670
Newfoundland	163,975	10,707	60.4	71.4	1,570	6,850
Prince Edward Island	53,332	9,547	71.3	78.8	1,290	4,700
Nova Scotia	346,392	9,679	64.4	77.4	1,200	5,370
New Brunswick	274,173	10,734	82.4	104.7	1,700	5,020
Quebec	2,299,352	11,913	55.5	67.2	1,930	5,670
Ontario	3,891,603	10,134	37.8	44.9	2,540	5,240
Manitoba	508,751	8,502	32.0	39.5	2,180	7,420
Saskatchewan	568,918	7,489	41.1	53.8	1,750	4,340
Alberta	1,035,562	9,069	44.4	55.3	1,400	6,410
British Columbia	1,333,277	8,356	53.8	63.3	2,150	6,320

Source: Motor Vehicle Traffic Accidents 1974, Statistics Canada 53-206,
The Motor Vehicle, Part III, Registrations, 1974, Statistics Canada 53-219.

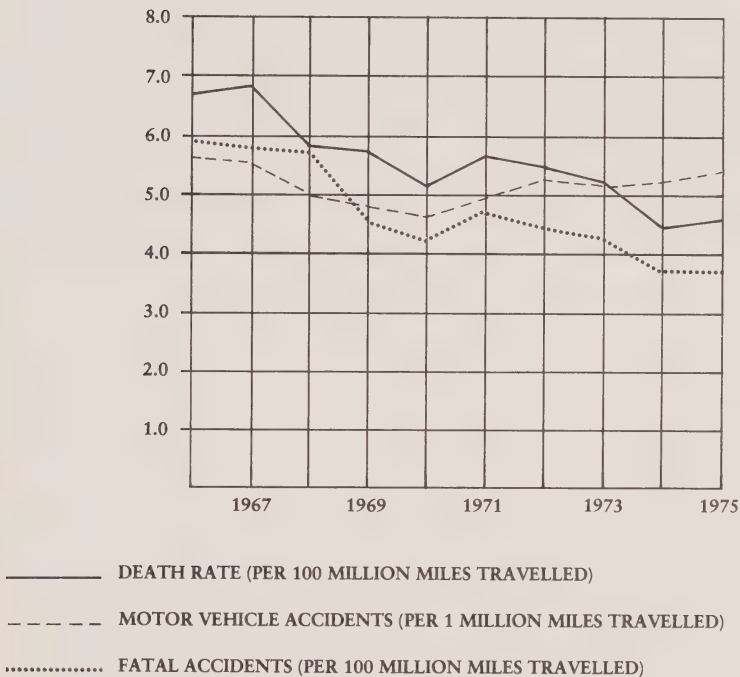
Historical trends in accident rates, as shown in Illustration VIII, suggest that fatal accidents and deaths per 100 million miles travelled have been declining in recent years while accidents per million miles have shown an overall increase since 1970.

In 1974, Ontario had 204,271 reported accidents involving 336,847 drivers and 372,816 vehicles.⁷ Two or more motor vehicles were involved in 70 per cent of all accidents, while almost 25 per cent

7. *Motor Vehicle Accident Facts, 1975, 1974*, Ministry of Transportation and Communications

involved a single vehicle with pedestrians, cyclists or others. Most accidents resulted in property damage only (68.5 per cent), and the remainder caused personal injuries, of which less than one per cent were fatal.

Illustration VIII
TRENDS IN MOTOR VEHICLE ACCIDENT RATES,
DEATH RATES, FATAL ACCIDENT RATES 1966-1975
IN ONTARIO



SOURCE: *MOTOR VEHICLE COLLISION FACTS 1975*
MINISTRY OF TRANSPORTATION AND COMMUNICATIONS

It should be noted these numbers represent reported accidents only. The minimum property damage limit for reporting accidents was changed from \$100 to \$200 on January 1, 1970 and this accounts for the appearance of a sudden downturn in 1970.

In 1975, 1,800 persons were killed in traffic accidents in Ontario, of whom 43 per cent were automobile drivers, 30 per cent automobile passengers, 16 per cent pedestrians and the remaining 11 per cent bicyclists, motorcyclists and others. Persons injured numbered 97,034, of whom 47 per cent were automobile drivers, 37 per cent automobile passengers, 8 per cent pedestrians and 8 per cent bicyclists, motorcyclists and others.

A higher percentage of motorcycle accidents was fatal—2.5 per cent of the accidents in which motorcycles were involved in 1975 against 0.5 per cent of passenger car accidents. On a per vehicle basis there were 147 fatal accidents per 100,000 motorcycles registered in 1974 compared with 54 per 100,000 passenger cars registered in that same year.

Reductions attributed to the use of seat belts and lower speed limits occurred from 1975 to 1976 in deaths (from 1,800 in 1975 to 1,511 in 1976), fatal accidents (1,520 to 1,264) and injuries (from 97,034 to 83,762). Deaths and fatal accidents decreased by over 16 per cent and injuries by over 13 per cent. Accidents involving property damage only increased by 4.3 per cent from 146,358 to 152,603 in 1976, resulting in total accidents remaining about the same—a 0.8 per cent reduction from 213,689 to 211,922.

The overall number of accidents has been increasing in recent years as shown in Illustration IX.

Illustration IX
MOTOR VEHICLE ACCIDENTS IN ONTARIO

Year	Number of Accidents	Increase
1966	139,781	
1967	145,008	3.7
1968	155,127	6.9
1969	169,395	9.2
1970	141,609	(16.4)
1971	158,831	12.2
1972	189,494	19.3
1973	193,021	1.9
1974	204,271	5.8
1975	213,689	4.6

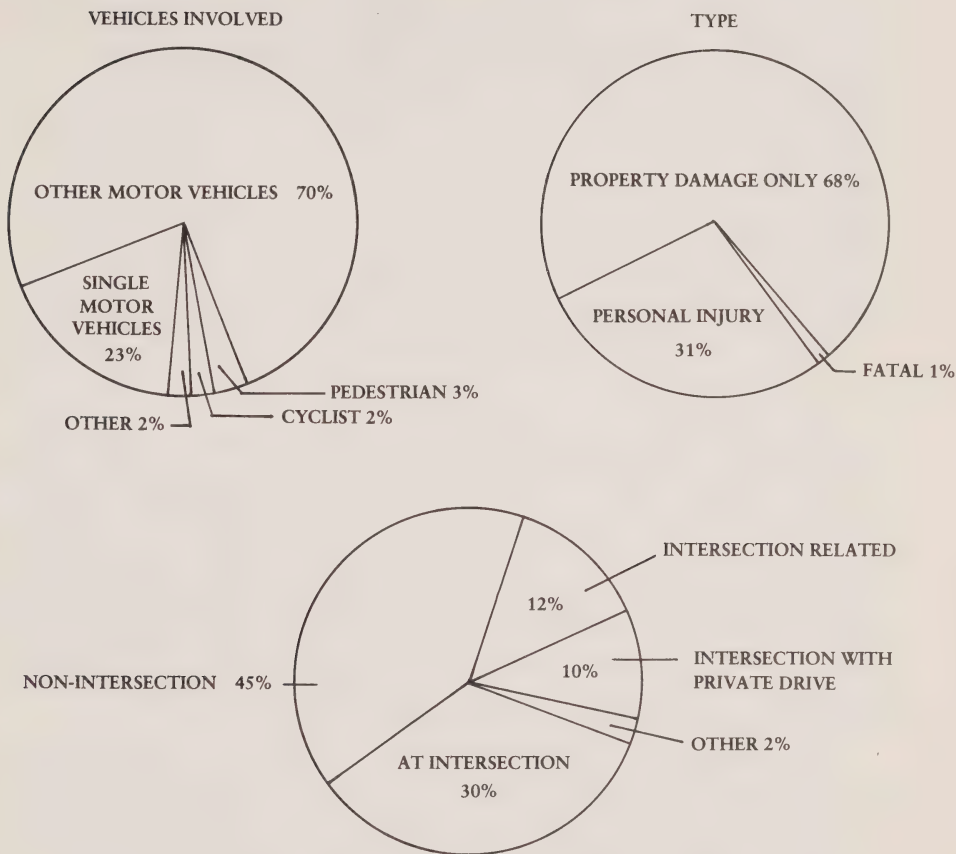
Source: Ministry of Transportation and Communications.

Conditions

Most accidents take place under good conditions, on dry paved roads and with good visibility. In 1975, 34 per cent occurred in darkness, 5 per cent at dawn or dusk, and 61 per cent during daylight hours. Mechanical defects played a small role in causing accidents, with only 2.8 per cent of the vehicles involved in accidents found to have any apparent defect where the condition of the vehicles was known. As a result the Committee has positively concluded that, regardless of everything else, driver action is the major cause of accidents.

As Illustration X shows, road location of accidents varied considerably, with over 50 per cent of accidents at intersections or related to intersections. Automobiles were involved in 82.7 per cent of all accidents; not surprisingly, since they comprise 83.7 per cent of registered motor vehicles.

Illustration X
ACCIDENTS: VEHICLES INVOLVED, TYPE AND ROAD LOCATION
IN ONTARIO



SOURCE: MOTOR VEHICLE ACCIDENTS FACTS, 1975
 MINISTRY OF TRANSPORTATION AND COMMUNICATIONS

Driver Action

Most accidents occurred when the vehicles were “going ahead” as this was the situation in 60 per cent of all accidents. Vehicles making turns comprised 14 per cent of those in accidents, while 15 per cent of the vehicles were stopped or parked. The “apparent driver action” of all drivers involved in accidents has been broken down in several categories:

Illustration XI

	Number of Drivers Involved in Accidents	% of Total
Driving properly	158,518	45.1%
Following too close	18,854	5.4
Speed too fast	31,254	8.9
Improper turn	13,136	3.7
Disobey traffic signal	5,753	1.6
Disobey stop sign	4,590	1.3
Fail to yield right-of-way	36,484	10.4
Improper passing	5,267	1.5
Lost control	26,451	7.5
Wrong way on one-way road	387	0.1
Not known	18,204	5.2
Other	32,250	9.3
Total	351,148	100.0%

Drivers Involved

The age of drivers involved in accidents as indicated in Illustration XII shows that younger drivers were proportionately more involved in accidents. In 1975, an average of more than 25 per cent of the number of licensed 16 year old drivers had an accident during the year,—over three times the rate for all drivers! However, as with all age classes, it is impossible to know whether a small group of these drivers caused most of the accidents. While such information is included in accident reports, it is not readily available on an aggregated basis. A progressively smaller proportion of older drivers was involved in accidents, and an average 8.4 per cent of all drivers had an accident in 1975.

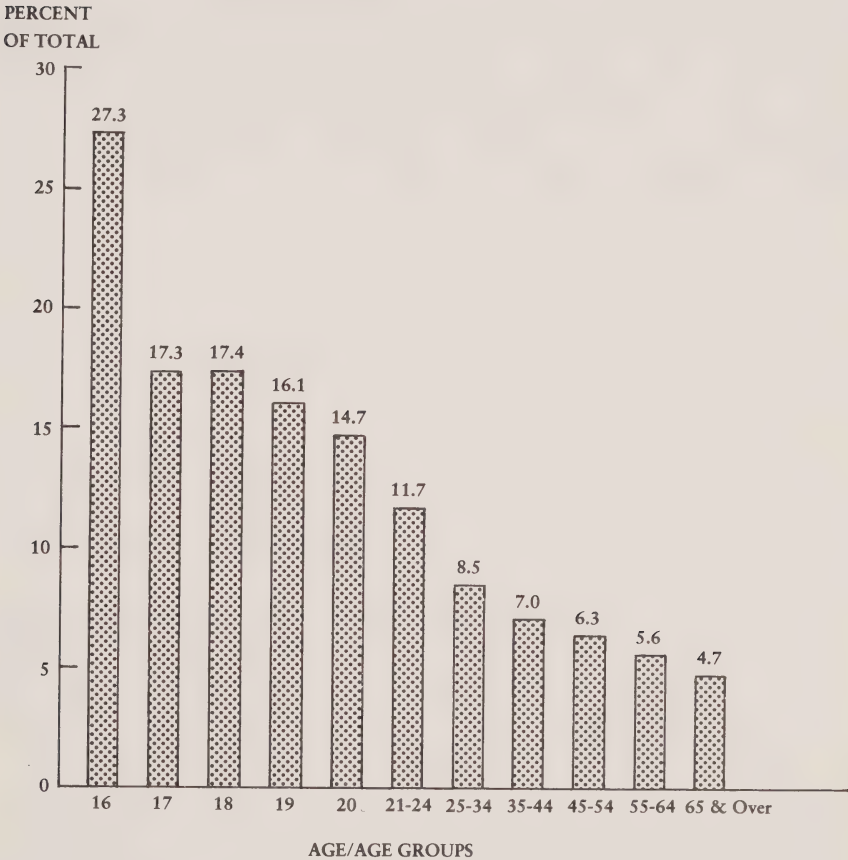
The percentage of drivers in accidents who had been drinking or were impaired, is recorded by age group. While 8.8 per cent of all drivers in accidents were so affected, higher proportions of drivers in the 18 to 24 age group were affected by alcohol at the time of the accident. Alcohol was even more a factor in fatal accidents where 26.5 per cent of the drivers had been drinking or were impaired. The Committee is gravely concerned about these consequences of alcohol consumption and wishes to emphasize the importance of vigorous remedial action being taken to bring this serious problem under control. The Committee notes that the Legislature's Select Committee on Highway Safety, which has been sitting during the same period as this Committee, will be reporting on this problem in full detail.

Location

On a geographical basis, accidents are more frequent in urban centres. Metropolitan Toronto has a particularly high index of accidents

on a per capita basis, 66.4 per 1,000⁸. In comparison, the Ontario average was 27.7 and other major cities varied between a low of 21.8 for Windsor to 36.2 for Ottawa.

Illustration XII
LICENSED DRIVERS IN MOTOR VEHICLE ACCIDENTS
BY AGE/AGE GROUPS IN ONTARIO, 1975



Economic Cost

The total economic cost of the accidents which have been described is enormous. Statistics prepared for the Superintendent of Insurance give an indication as to the minimum cost arising from accidents in which insurance was involved. However, these statistics do not take into ac-

8. Index based on 1975 number of accidents from *Motor Vehicle Accident Facts* and 1971 population data from the Census of Canada.

count losses that were in excess of policy limits. Further losses are reflected in information available from the Motor Vehicle Accident Claims Fund. Additional losses may probably have been incurred in medical and hospitalization expenses that have been omitted from the figures that are available. Subject to these clarifications, it would appear that the total economic losses from private passenger automobile accidents in Ontario in 1975 amounted to at least \$278,000,000 in property damage and at least \$168,000,000 in bodily injury damage. It should be added that these figures are not entirely exact because the insurance records include allowances for adjusting costs. Even after taking this into consideration, the amount of these losses is certainly staggering and indicates the vital importance of an effective loss distribution system. It need hardly be added that the figures that have been quoted deal only in economic losses and in no way reflect the non-monetary, personal suffering that resulted from these accidents.

Summary

1. In order to appreciate the magnitude of the business of automobile insurance, it is necessary to recognize the magnitude of the motor vehicle system which it services.
2. The number of licensed drivers has increased during the past 25 years to the point where 70 per cent of the population over 16 years of age is licensed. To put it another way, almost all men in the 25 to 65 age group are licensed and a rapidly increasing proportion of women in that same age group is becoming licensed.
3. The growth in the number of motor vehicles has been even more rapid. Automobiles, which constitute about 84 per cent of all motor vehicles in the province, are so numerous that there is now approximately one automobile per household in Ontario. If trucks, buses and motorcycles are added, the ratio of vehicles to households is even higher.
4. The road system in Ontario now consists of some 97,780 miles of public roads and the use of these roads has increased even more rapidly than the increase in licensed drivers and vehicles, suggesting that Ontario drivers are using their vehicles more frequently to go longer distances.
5. Driver action, rather than driving conditions, is the cause of most accidents. Drivers' involvement in accidents decreases as age increases, as indicated by the fact that 27.3 per cent of 16 year old drivers had accidents in 1975, as contrasted with 4.7 per cent of drivers 65 years of age and over. Accident frequency is highest in Toronto, with 66.4 accidents per 1,000 population in comparison with an average of 27.7 accidents per 1,000 population across the whole province in 1975.

6. There has been a continuous increase over the years in the over-all number of accidents, reaching 213,689 reported accidents in Ontario in 1975 and an increase in the losses that are incurred. There has also been an increase in the accident rate per million miles travelled.
7. The total economic losses from motor accidents cannot be estimated exactly, however they amounted in 1975 to at least 446 million dollars, and probably to significantly more.
8. Clearly the motor vehicle system constitutes an immense field for automobile insurance to service.

CHAPTER 2

The Role of Automobile Insurance in a Mobile Society

The preceding chapter described the motor vehicle system in Ontario and the almost universal use and ownership of motor vehicles by the people of the province. It also gave some indication of the immense losses that seem to be an inevitable part of that system. And we have seen that, at least in an overall sense, these losses have constantly increased and continue to increase.

Our society has developed a variety of responses aimed at coping with these escalating losses. First and most obvious, society has sought to minimize the frequency and severity of the damages wrought by automobiles. For example, projects have been undertaken to improve the safety of our highways and the safety of our automobiles, — such as by the use of collapsible steering wheels, padded dashboards, shatterproof glass and recessed doorknobs. Driver education programmes have been expanded and improved. Law enforcement campaigns have been instituted. Measures have been enacted to combat the problem of alcohol-induced accidents. And most recently, legislation requiring the use of seat belts and the reduction of speed limits on highways has begun to arrest and lower the toll of life, limb and property loss caused by car crashes. The Committee applauds these efforts, which are apparently beginning to bear fruit,¹ and wishes to encourage governments at all levels to continue to seek ways of curtailing the number and severity of car collisions. To this end, the Legislature's Select Committee on Highway Safety has been deliberating at the same time that this Committee has been conducting its hearings as has already been noted.

It is self evident, however, that motor accidents will continue to wreak substantial loss upon our society so long as there are roads and automobiles. Even if everything possible were done to curb losses, those that would remain would still be substantial. As a result, there is no escaping the problem of how our society should distribute, or share, motor accident losses. This is the fundamental concern of this Report.

The problem of how these losses are to be borne within our society breaks down into two major issues: first, who is to be compensated for losses that are suffered and to what extent; and second, when compensation is to be paid, who is to pay for it, or more accurately, who is to share in paying for it. These are the two elements in the problem of loss distribution.

1. Preliminary information from the Ontario Provincial Police and Ministry of Transportation and Communications for 1976.

A brief examination of legal history indicates quite clearly that the problem of how accident losses should be borne is one that every society has had to face, not just our motorized society. It is equally clear that there is nothing unchangeable about the solutions that societies have adopted from time to time to solve the problem. As an example, the Anglo-Saxon law and the early Anglo-Norman common law of England embodied a rule as to loss-bearing that was altogether different from that of our modern law. The old law imposed a rule of absolute or strict liability under which the person causing an accidental loss was required to pay compensation, quite regardless of the presence or absence of any element of fault in his conduct. The modern rule of the common law is of course quite to the contrary. Its principle is that a person causing a loss in a motor accident must compensate the injured person but only to the extent that his loss resulted from the driver's negligence. Conversely, if the driver suffered a loss himself, he must bear his own loss to the extent that he was negligent. (It should be added that we have also developed a rule of vicarious liability so that the owner is liable for the negligence of the person who drives with his permission.)

Thus, even a brief review of legal history indicates that the problem of who is to bear losses from accidents has various solutions, none of which is immutable, and that a society can evolve its own solutions to the problem in accordance with its own current needs and abilities.

It is worth repeating that our modern society has chosen to adopt a general doctrine that a person is to be compensated for the loss he suffers, to the extent that it is caused by the negligence of another, and that such compensation must be paid by the party who was negligent. This is the basic principle that we have enshrined in our general law. But while this proposition is accurate insofar as it relates to the determination of liability for loss caused by motor accidents, the effect of this legal doctrine has been significantly modified as a result of the system of automobile insurance that has now received general acceptance throughout our society.

Our system of motor accident insurance generally accepts the doctrine of the law of tort that a person is to be compensated for the loss that he suffers to the extent that it is caused by the negligence of another, and that the compensation must be paid by the negligent party. But it then takes that loss which would otherwise fall on the negligent driver and distributes it throughout the insured driving community generally. This is the essence of our society's loss distribution system.

Indeed the automobile insurance system that our society has already adopted goes a fundamental step farther than that. Under the general doctrine of tort law the injured party is entitled to compensation for his loss only to the extent that he was not negligent. But another

element of automobile insurance which we have evolved now provides for the payment of at least some limited compensation to the injured individual quite regardless of any element of negligence. This element (generally referred to as “accident benefits coverage”) is a variety of no-fault insurance that we have incorporated into our Ontario automobile insurance system. It is reviewed in detail in Chapter 7.

It will be apparent from the foregoing that our society is evolving a double-ended system of loss distribution. At the one end the burden of economic loss suffered by a person injured in a motor accident is lifted to the extent that he is at fault and in a limited degree, even where he is not at fault. At the other end, the economic loss that would otherwise be imposed upon the negligent driver is distributed generally across the driving community by means of the automobile insurance system.

The principle of using insurance to distribute losses throughout the driving community is universally approved in our society, although there is a continuing debate about certain aspects of the system such as the emphasis which the system places on “fault”. This Committee obviously acknowledges and supports the basic principle of automobile insurance but it recognizes that there is a need for a great many practical improvements in the way in which our system of loss distribution actually works. That is the consistent theme of this Report.

It was first necessary to review the standard automobile policy in order to evaluate the adequacy of its terms. This Report therefore begins by making recommendations as to the improvements that should be made in those terms so that the process of distributing losses can be carried out as effectively as possible. This general topic will be dealt with in Part II of this Report, which includes Chapters 3 to 9 inclusive.

The Committee then turned its attention to the cost of our loss distribution system; that is to say it concerned itself with the premiums that must be paid by the driving community. The Committee has examined the way in which such premiums are currently determined and how premium rates are applied to the individual policyholder. Related to the problem of premium and rate setting is the problem of the high-risk driver and his difficulties in obtaining insurance coverage. These problems are reviewed in Part III of the Report, which includes Chapters 10 to 14, and the Committee’s recommendations as to improvements in that aspect of the insurance system are set out in chapter 14.

This was followed by a study of the many problems related to the settlement of claims that are made by those who incur motor accident losses. A problem that is closely related is that of minimizing the losses that are suffered. These problems of fair claims procedures and loss minimization are reviewed in Part IV which includes Chapters 15 to 23.

It is fundamental to the basic theme of this Report that the automobile insurance system through which we seek to cope with motor accident losses should be as universal as it is humanly possible to make it. The Committee has therefore dealt with and recommended the adoption of compulsory automobile insurance. This principle and the practical problems that are incidental to it, including the vital problem of compliance and enforcement, are dealt with in Part V, Chapters 24, 25 and 26.

It will be apparent that all of the problems described up to this point and the resulting recommendations apply quite irrespective of the method by which the automobile insurance system is operated. They are problems that arise regardless of whether the system is in the hands of private industry or in the hands of a government agency. It was appropriate that, having dealt with the foregoing aspects of the automobile insurance system, the Committee should turn its attention to the automobile insurance industry as it exists in Ontario today. In Part VI, Chapters 27 and 28, the Committee has described various aspects of the industry and has also added certain recommendations as to the way in which the industry's operations should be improved.

Finally, in Part VII, of this Report, the Committee has summarized its conclusions and recommendations and has also indicated some of the important issues in automobile insurance upon which it proposes to focus its attention when it makes its second Report on automobile insurance.

PART II
THE STANDARD AUTOMOBILE POLICY

S.P.F. No. 1
STANDARD AUTOMOBILE POLICY
(OWNER'S FORM)

Insurance Company"

(HEREINAFTER CALLED THE INSURER)

WHEREAS AN APPLICATION HAS BEEN MADE BY THE APPLICANT (HEREINAFTER CALLED THE INSURED) TO THE INSURER FOR A CONTRACT OF AUTOMOBILE INSURANCE AND THE SAID APPLICATION FORMS PART OF THIS CONTRACT OF INSURANCE AND IS AS FOLLOWS —

AGENT

AT
ITEM 1
FULL NAME
AND
POSTAL
ADDRESS OF
THE APPLICANT
(INCLUDING COUNTY
OR DISTRICT)

DATE OF BIRTH			POLICY NO.	
DAY	MO.	YR.	OCCUPATION OR BUSINESS (IF MARRIED WOMAN GIVE HUSBAND'S OCCUPATION OR BUSINESS)	

NAME OF EMPLOYER AND BUSINESS ADDRESS

THE DESCRIBED AUTOMOBILE IS AND WILL BE CHIEFLY USED AND USUALLY KEPT IN THE TOWN AND PROVINCE
OF THE APPLICANT'S ADDRESS UNLESS OTHERWISE SPECIFIED HEREIN
12:01 A.M. STANDARD TIME AT THE APPLICANT'S ADDRESS STATED HEREIN AS TO EACH OF SAID DATES

ITEM 2. POLICY PERIOD:

FROM TO
ITEM 3. PARTICULARS OF THE DESCRIBED AUTOMOBILE —

MODEL YEAR	TRADE NAME	SERIAL NUMBER	NO. OF CYL.	TYPE OF BODY	MODEL NAME NUMBER OR C.C.	TRUCK GROSS WEIGHT
PURCHASED BY APPLICANT		CASH PURCHASE PRICE TO APPLICANT INCLUDING EQUIPMENT	STATE AMOUNT OF MORTGAGE, LIEN OR ENCUMBRANCE	STATE NAME AND ADDRESS OF LIENHOLDER OR MORTGAGEE TO WHOM, JOINTLY WITH THE APPLICANT, LOSS, IF ANY, UNDER SECTION C OF THE INSURING AGREEMENTS IS PAYABLE AS THEIR INTERESTS MAY APPEAR		
MONTH	YEAR	NEW OR USED				
		\$	\$	NAME ADDRESS		

ITEM 4. THIS APPLICATION IS MADE FOR INSURANCE AGAINST ONE OR MORE OF THE PERILS MENTIONED IN THIS ITEM, BUT FOR INSURANCE UNDER THE SECTION(S) OR SUB SECTION(S) FOR WHICH A PREMIUM IS SPECI-
FIED IN THIS ITEM AND NO OTHER AND UPON THE TERMS, CONDITIONS, PROVISIONS, DEFINITIONS AND EXCLUSIONS OF THE INSURER'S CORRESPONDING STANDARD POLICY FORM AND FOR THE FOLLOWING
SPECIFIED LIMITS AND AMOUNTS

INSURING AGREEMENTS	PERILS		LIMITS AND AMOUNTS	PREMIUM
SECTION A THIRD PARTY LIABILITY	LEGAL LIABILITY FOR BODILY INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO PROPERTY	\$	(EXCLUSIVE OF INTEREST AND COSTS) FOR LOSS OR DAMAGE RESULTING FROM BODILY INJURY TO OR THE DEATH OF ONE OR MORE PERSONS, AND FOR LOSS OR DAMAGE TO PROPERTY, RE- GARDESS OF THE NUMBER OF CLAIMS ARISING FROM ANY ONE ACCIDENT	\$
SECTION B ACCIDENT BENEFITS	PAYMENTS FOR DEATH OR BODILY INJURY		AS STATED IN SECTION B OF THE POLICY	\$
	UNINSURED MOTORIST		AS STATED IN SECTION B OF THE POLICY	\$
SECTION C LOSS OF OR DAMAGE TO INSURED AUTOMOBILE	SUB SEC. 1. ALL PERILS	\$	THIS POLICY CONTAINS A PARTIAL PAYMENT OF LOSS CLAUSE AMOUNT DEDUCTIBLE ON EACH SEPARATE CLAIM EXCEPT FOR LOSS OR DAMAGE BY FIRE OR LIGHTNING OR THEFT OF THE ENTIRE AUTOMOBILE.	\$
	2. COLLISION OR UPSET	\$		\$
	3. COMPREHENSIVE (EXCLUDING COLLISION OR UPSET)	\$		\$
	4. SPECIFIED PERILS (EXCLUDING COLLISION OR UPSET)	\$		\$

ENDORSEMENTS —

ENDORSEMENT RESTRICTING
OCCUPANT COVERAGE IN
COMMERCIAL AUTOMOBILES
IS APPLICABLE HERETO

MINIMUM RETAINED PREMIUM IF POLICY CANCELLED	\$	TOTAL PREMIUM	\$
--	----	---------------	----

ITEM 5. (A) STATE THE PURPOSES FOR WHICH THE AUTOMOBILE IS AND WILL BE CHIEFLY USED (IF THE USE IS STATED
AS "PLEASURE" THAT WORD SHALL BE REGARDED AS INCLUDING THE USE OF THE AUTOMOBILE AS TRANSPORTATION BETWEEN
THE PLACE OF RESIDENCE AND THE PLACE OF BUSINESS OF THE APPLICANT.) (A)
(B) WILL THE AUTOMOBILE BE RENTED OR LEASED, OR USED FOR CARRYING PASSENGERS FOR COMPENSATION
OR HIRE, OR FOR CARRYING EXPLOSIVES OR RADIOACTIVE MATERIAL? IF SO, STATE PARTICULARS (B)
(C) WILL THE AUTOMOBILE BE USED FOR THE TRANSPORTATION OF GOODS FOR COMPENSATION? IF SO, STATE
CLASS OF LICENSE OR CERTIFICATE AND RADIUS OF OPERATIONS (C)
(D) WILL THE AUTOMOBILE BE OPERATED BY ANY PERSON SUFFERING FROM THE LOSS OF, OR LOSS OF USE OF,
AN E.E., HAND, FOOT OR LIMB, OR WHO IS PHYSICALLY OR MENTALLY DISABLED TO AN EXTENT THAT
MIGHT AFFECT THE SAFE OPERATION OF AN AUTOMOBILE? (D)

ITEM 6. (A) HAS ANY LICENSE, PERMIT, REGISTRATION CERTIFICATE OR OTHER LIKE AUTHORITY, ISSUED TO THE APPLI-
CANT OR A MEMBER OF HIS HOUSEHOLD UNDER ANY LAW OR STATUTE OF ANY PROVINCE, STATE OR COUNTRY
RELATIVE TO AUTOMOBILES, TO THE KNOWLEDGE OF THE APPLICANT, BEEN OR CONTINUED TO BE SUSPENDED
OR CANCELLED WITHIN THE THREE YEARS PRECEDING THIS APPLICATION? IF SO, STATE PARTICULARS (A)
(B) HAS ANY INSURER, TO THE KNOWLEDGE OF THE APPLICANT, CANCELED, DECLINED OR REFUSED TO RENEW
OR ISSUE AUTOMOBILE INSURANCE TO THE APPLICANT OR SPOUSE WITHIN THE THREE YEARS PRECEDING THIS
APPLICATION? IF SO, STATE NAME OF INSURER (B)

ITEM 7. STATE PARTICULARS OF ALL ACCIDENTS,
LOSSES OR CLAIMS ARISING OUT OF THE
OWNERSHIP, USE OR OPERATION OF ANY AUTO-
MOBILE BY THE APPLICANT OR SPOUSE WITHIN
THE THREE YEARS PRECEDING THIS APPLICATION.

INJURY TO PERSONS	{ (A) COLLISION (B) OTHER CAUSES
DAMAGE TO PROPERTY OF OTHERS	
DAMAGE TO OWNED OR OPERATED AUTOMOBILE BY	

ITEM 8. UNLESS OTHERWISE STATED THE APPLICANT IS BOTH THE REGISTERED OWNER AND ACTUAL OWNER OF THE DESCRIBED AUTOMOBILE. IF NOT, STATE THE NAME OF

(A) THE REGISTERED OWNER (B) THE ACTUAL OWNER

ITEM 9. ALL THE STATEMENTS IN THIS APPLICATION ARE TRUE AND THE APPLICANT HEREBY APPLIES FOR A CONTRACT OF AUTOMOBILE INSURANCE TO BE BASED ON THE TRUTH OF THE SAID STATEMENTS

ITEM 10. Where, (a) an applicant for a contract, (i) gives false particulars of the described automobile to be insured to the prejudice of the Insurer, or (ii) knowingly misrepresents or fails to disclose in the application any fact required to be stated therein; (b) the insured contravenes a term of the contract or commits a fraud; or (c) the insured wilfully makes a false statement in respect of a claim under the contract, a claim by the insured is invalid and the right of the insured to recover indemnity is forfeited. A consumer report containing personal, credit, factual or investigative information about the applicant may be sought in connection with this application for insurance or any renewal, extension or variation thereof.

COUNTERSIGNED

AUTHORIZED REPRESENTATIVE

INSURING AGREEMENTS

Now Therefore in consideration of the payment of the premium specified and of the statements contained in the application and subject to the limits, terms, conditions, provisions, definitions and exclusions herein stated and subject always to the condition that the insurer shall be liable only under the section(s) or subsection(s) of the following Insuring Agreements A, B, C for which a premium is specified in item 4 of the application and no other.

SECTION A — THIRD PARTY LIABILITY

The Insurer agrees to indemnify the insured and, in the same manner and to the same extent as if named herein as the insured, every other person who with his consent personally drives the automobile, or personally operates any part thereof, against the liability imposed by law upon the insured or upon any such other person for loss or damage arising from the ownership, use or operation of the automobile and resulting from

BODILY INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO PROPERTY

The Insurer shall not be liable under this section,

- (a) For any liability imposed by any workmen's compensation law upon any person insured by this section; or
- (b) for loss or damage resulting from bodily injury to or the death of any person insured by this section; or
- (c) for loss or damage resulting from bodily injury to or the death of any employee of any person insured by this section while engaged in the operation or repair of the automobile; or
- (d) for loss of or damage to property carried in or upon the automobile or to any property owned or rented by, or in the care, custody or control of any person insured by this section; or
- (e) while the automobile is used for towing a trailer owned by the insured unless indemnity is also provided by the Insurer in respect of the trailer; or
- (f) while the trailer, if it is the insured vehicle, is towed by an automobile owned by the insured unless indemnity is also provided by the Insurer in respect of the automobile; or
- (g) for any amount in excess of the limit(s) stated in section A of item 4 of the application, and expenditures provided for in the Additional Agreements of this section; subject always to the provisions of the section of the Insurance Act (Automobile Insurance Part) relating to the nuclear energy hazard; or
- (h) for any liability arising from contamination of property carried in the automobile.

See also General Provisions, Definitions, Exclusions
and Statutory Conditions of this Policy

ADDITIONAL AGREEMENTS OF INSURER

Where indemnity is provided by this section the Insurer shall,

- (1) upon receipt of notice of loss or damage caused to persons or property, serve any person insured by this policy by such investigation thereof, or by such negotiations with the claimant, or by such settlement of any resulting claims, as may be deemed expedient by the Insurer; and
- (2) defend in the name and on behalf of any person insured by this policy and at the cost of the Insurer any civil action which may at any time be brought against such person on account of such loss or damage to persons or property; and
- (3) pay all costs taxed against any person insured by this policy in any civil action defended by the Insurer and any interest accruing after entry of judgment upon that part of the judgment which is within the limit(s) of the Insurer's liability; and
- (4) in case the injury be to a person, reimburse any person insured by this policy for outlay for such medical aid as may be immediately necessary at the time of such injury; and
- (5) be liable up to the minimum limit(s) prescribed for that province or territory of Canada in which the accident occurred, if that limit(s) is higher than the limit(s) stated in section A of item 4 of the application; and
- (6) not set up any defense to a claim that might not be set up if the policy were a motor vehicle liability policy issued in the province or territory of Canada in which the accident occurred.

AGREEMENTS OF INSURED

Where indemnity is provided by this section, every person insured by this policy

- (a) by the acceptance of this policy, constitutes and appoints the Insurer his irrevocable attorney to appear and defend in any province or territory of Canada in which action is brought against the insured arising out of the ownership, use or operation of the automobile;
- (b) shall reimburse the Insurer, upon demand, in the amount which the Insurer has paid by reason of the provisions of any statute relating to automobile insurance and which the Insurer would not otherwise be liable to pay under this policy.

SECTION B — ACCIDENT BENEFITS

The Insurer agrees to pay to or with respect to each insured person as defined in this section who sustains bodily injury or death by an accident arising out of the use or operation of an automobile.

SUBSECTION 1 — MEDICAL AND REHABILITATION BENEFITS

- (1) All reasonable expenses incurred within four years from the date of the accident as a result of such injury for necessary medical, surgical, dental, hospital, professional nursing, and ambulance service and, in addition, for such other services and supplies which are, in the opinion of the insured person's attending physician and that of the Insurer's medical advisor, essential for the treatment or rehabilitation of said person, to the limit of \$5,000.00 per person.
- (2) Funeral services up to the amount of \$500.00 in respect to the death of any one person.

The Insurer shall not be liable under this subsection for those portions of such expenses payable or recoverable under any medical, surgical, dental, or hospitalization plan or law or, except for similar insurance provided under another automobile insurance contract, under any other insurance contract or certificate issued to or for the benefit of, any insured person.

SUBSECTION 2 — DEATH AND TOTAL DISABILITY

Part I. Death Benefits

A. Subject to the provisions of this Part I, for death which ensues within 180 days of the accident or within 104 weeks of the accident if there has been continuous total disability during that period, a payment—based on the age and status at the date of the accident of the deceased in a household where spouse or dependants survive—of the following amount:

Age of Deceased at Date of Accident	Status of Deceased		
	Head of Household	Spouse in Two-parent Households	Dependent Children
Under 5 years	—	—	\$ 500.
5 years but under 10 years	—	—	1,000.
10 years but under 21 years	\$5,000.	\$2,500.	1,000.
21 years and over	5,000.	2,500.	—

In addition, with respect to death of head of household, where there are two or more survivors — spouse or dependants — the principal sum payable is increased \$1,000. for each survivor other than the first.

B. FOR THE PURPOSES OF THIS PART I,

- (1) the spouse of head of household shall be deemed to be the spouse with the lesser income in the year preceding the date of death;
- (2) a deceased person whose only surviving dependants are his parents or the parents of his spouse shall be deemed a head of household if such parents, at the date of the accident, were residing in the same dwelling premises as the deceased person and were principally dependent upon him for financial support;
- (3) the words "dependent child" as used herein shall mean a child,
 - (a) under the age of 21 years and who resides with and is wholly dependent upon the head of the household for financial support; or

- (b) 21 years of age or over who, because of mental or physical infirmity, is wholly dependent upon the head of household for financial support;
- (4) the total amount payable shall be paid with respect to death of head of household or spouse to the surviving spouse. If there is no surviving spouse in the household, no amount shall be payable unless there are surviving dependent children or dependent parents, as defined in (2) and (3) above, and in that event the total sum payable shall be divided equally among the surviving dependants in the household;
- (5) the total amount payable with respect to death due to a common disaster of head of household and spouse shall be divided equally between surviving dependent children or dependent parents;
- (6) the amount payable with respect to the death of a dependent child shall be divided equally between the surviving parents; if no parent survives no amount shall be payable;
- (7) amounts payable under this Part I shall be paid only to a person who is alive 30 days after the death of the insured person.

PART II. TOTAL DISABILITY

A weekly benefit for the period during which the injury shall wholly and continuously disable such insured person; provided,

- (a) such person was employed at the date of the accident;
- (b) within 20 days from the date of the accident such injury prevents him from performing any and every duty pertaining to his occupation or employment;
- (c) no benefit shall be payable for any period in excess of 104 weeks except that if, at the end of the 104 week period, it has been established that such injury permanently and totally disabled such person from engaging in any occupation or employment for which he is reasonably suited by education, training or experience, the Insurer agrees to pay such weekly benefit for the duration of such disability;
- (d) any such weekly benefit will be reduced by the amount of the Old Age Pension and any retirement pension under the Canada Pensions Plan, as established when the insured person first became eligible therefor.

Amount of Weekly Benefit — The weekly benefit payable shall be at the rate of 80 per cent of the gross weekly earnings, subject to a maximum of \$70 per week.

The above benefits shall be subject to the terms of clause (3) below.

For the purposes of this Part II.

- (1) a principal unpaid housekeeper residing in the household and not otherwise engaged in occupation or employment for wages or profit, if injured, shall be deemed disabled only if completely incapacitated and unable to perform any of his or her household duties and, while so incapacitated, shall receive a benefit at the rate of \$35 per week for not more than 12 weeks;
- (2) a person shall be deemed to be employed,
 - (a) if actively engaged in occupation or employment for wages or profit at the date of the accident; or
 - (b) if 21 years of age or over and under the age of 65 years, so engaged for any six months out of the preceding 12 months;
- (3) except for the first two weeks of disability where the benefits for loss of time payable hereunder, together with benefits for loss of time under another contract, including a contract of group accident insurance and a life insurance contract providing disability insurance, exceed the money value of the time of the insured person, the Insurer is liable only for that proportion of the benefits for loss of time stated in this policy that the money value of the time of the person insured bears to the aggregate of the benefits for loss of time payable under all such contracts.

SUBSECTION 3 — UNINSURED MOTORIST COVER

All sums which every insured person shall be legally entitled to recover as damages for bodily injury, and all sums which any other person shall be legally entitled to recover as damages because of the death of any insured person, from the owner or driver of an uninsured or unidentified automobile as defined herein.

- (1) **The Insurer shall not be liable under this subsection,**
 - (a) in respect of any accident which occurs in any province of Canada;

- (b) to any person who has a right of recovery under an unsatisfied judgment or similar fund in effect in any jurisdiction of the United States of America;
- (c) to any person who, without the written consent of the Insurer, makes directly or through his representative any settlement with or prosecutes to judgment any action against any person or organization which may be legally liable therefor;
- (d) for any amount in excess of the minimum limit(s) for automobile bodily injury liability insurance applicable in the jurisdiction in which the accident occurs regardless of the number of persons so injured or killed, but in no event shall such limit(s) exceed the minimum limit(s) applicable in the jurisdiction stated in item 1 of the application.

(2) Uninsured automobile defined

An "uninsured automobile" under this section means an automobile with respect to which neither the owner nor driver thereof has applicable and collectible bodily injury liability insurance for its ownership, use or operation, but shall not include an automobile owned by or registered in the name of

- (a) the named insured or by any person residing in the same dwelling premises therewith; or
- (b) the governments of Canada or the United States of America or any political sub-division thereof or any agency or corporation owned or controlled by any of them; or
- (c) any person who is an authorized self-insurer within the meaning of a financial or safety responsibility law; or
- (d) any person who has filed a bond or otherwise given proof of financial responsibility with respect to his liability for the ownership, use or operation of automobiles.

(3) Unidentified automobile defined

An "unidentified" automobile under this subsection means an automobile which causes bodily injury or death to an insured person arising out of physical contact of such automobile with the automobile of which the insured person is an occupant at the time of the accident, provided

- (a) the identity of either the owner or driver of such automobile cannot be ascertained, and
- (b) the insured person or someone on his behalf has reported the accident within 24 hours to a police, peace or judicial officer or to an administrator of motor vehicle laws and shall have filed with the Insurer within 30 days thereafter a statement under oath that the insured person or his legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity cannot be ascertained and setting forth the facts in support thereof; and
- (c) at the request of the Insurer, the insured person or his legal representative makes available for inspection the automobile of which the insured person was an occupant at the time of the accident.

(4) Limitation of liability

- (a) If claim is made under this subsection and claim is also made against any person who is an insured under section A — Third Party Liability of this policy, any payment under this subsection shall be applied in reduction of any amount which the insured person may be entitled to recover from any person who is insured under section A;
- (b) Any payment made under section A or under subsections 1 or 2 of section B of this policy to an insured person hereunder shall be applied in reduction of any amount which such person may be entitled to recover under this subsection.

(5) Determination of legal liability and amount of damages

The determination as to whether the insured person shall be legally entitled to recover damages and if so entitled, the amount thereof, shall be made by agreement between the insured person and the Insurer. If any difference arises between the insured person and the Insurer as to whether the insured person is legally entitled to recover damages, and, if so entitled, as to the amount thereof these questions shall be submitted to arbitration of some person to be chosen by both parties, or if they cannot agree on one person, then by two persons, one to be chosen by the insured person and the other by the Insurer, and a third person to be appointed by the persons so chosen. The submission shall be subject to the provisions of the The Arbitration Act and the award shall be binding upon the parties.

(6) Notice of legal action

If, before the Insurer makes payment of loss hereunder, the insured person or his representative shall institute any legal action for bodily injury or death against any other person owning or operating an automobile involved in the accident, a copy of the writ of summons or other process served in connection with such legal action shall be forwarded immediately to the Insurer.

**SPECIAL PROVISIONS, DEFINITIONS AND
EXCLUSIONS OF SECTION B**

(1) "INSURED PERSON" DEFINED

In this section, the words "insured person" mean,

- (a) any person while an occupant of the described automobile or of a newly acquired or temporary substitute automobile as defined in this policy;
- (b) the insured and, if residing in the same dwelling premises as the insured, his or her spouse and any dependent relative of either while an occupant of any other automobile; provided that,
 - (i) the insured is an individual or are husband and wife;
 - (ii) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident;
 - (iii) such other automobile is not owned or regularly or frequently used by the insured or by any person or persons residing in the same dwelling premises as the insured;
 - (iv) such other automobile is not owned, hired, or leased by an employer of the insured or by an employer of any person or persons residing in the same dwelling premises as the insured;
 - (v) such other automobile is not used for carrying passengers for compensation or hire or for commercial delivery;
- (c) in subsections 1 and 2 of this section only, any person, not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck, in Canada, by the described automobile or a newly acquired or temporary substitute automobile as defined in the policy;
- (d) in subsections 1 and 2 of this section only, the named insured, if an individual and his or her spouse and any dependent relative residing in the same dwelling premises as the named insured, not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck by any other automobile; provided that,
 - (i) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident;
 - (ii) that automobile is not owned or regularly or frequently used by the insured or by any person or persons residing in the same dwelling premises as the named insured;
 - (iii) that automobile is not owned, hired, or leased by an employer of the insured or by an employer of any person or persons residing in the same dwelling premises as the named insured;
- (e) if the insured is a corporation, unincorporated association, or partnership, any employee or partner of the insured for whose regular use the described automobile is furnished, and his or her spouse and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while an occupant of any other automobile of the private passenger or station wagon type; and
- (f) in subsections 1 and 2 of this section only, any employee or partner of the insured, for whose regular use the described automobile is furnished, and his or her spouse and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck by any other automobile; provided that, in respect of (e) and (f) above,
 - (i) neither such employee nor partner or his or her spouse is the owner of an automobile of the private passenger or station wagon type;
 - (ii) the described automobile is of the private passenger or station wagon type;
 - (iii) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident;
 - (iv) such other automobile is not owned or regularly or frequently used by the employee or partner, or by any person or persons residing in the same dwelling premises as such employee or partner;

- (v) such other automobile is not owned, hired, or leased by the insured or by an employer of any person or persons residing in the same dwelling premises as such employee or partner of the insured; in respect of (e) above only,
- (vi) such other automobile is not used for carrying passengers for compensation or hire or for commercial delivery.

(2) EXCLUSIONS

- (a) The insurer shall not be liable under this section for bodily injury to or death of any person,
 - (i) resulting from the suicide of such person or attempt thereat, whether sane or insane; or
 - (ii) who is entitled to receive the benefits of any workmen's compensation law or plan; or
 - (iii) caused directly or indirectly by radioactive material;
- (b) The insurer shall not be liable under subsection 1 or Part II of subsection 2 of this section for bodily injury or death,
 - (i) sustained by any person who is convicted of drunken or impaired driving or of driving while under the influence of drugs at the time of the accident; or
 - (ii) sustained by any person driving the automobile who is not for the time being either authorized by law or qualified to drive the automobile.

(3) NOTICE AND PROOF OF CLAIM

The insured person or his agent, or the person otherwise entitled to make claim or his agent, shall,

- (a) give written notice of claim to the Insurer by delivery thereof or by sending it by registered mail to the chief agency or head office of the Insurer in the Province, within 30 days from the date of the accident or as soon as practicable thereafter;
- (b) within 90 days from the date of the accident for which the claim is made, or as soon as practicable thereafter, furnish to the Insurer such proof of claim as is reasonably possible in the circumstances of the happening of the accident and the loss occasioned thereby;
- (c) if so required by the Insurer, furnish a certificate as to the cause and nature of the accident for which the claim is made and as to the duration of the disability caused thereby from a medical practitioner legally qualified to practise.

(4) MEDICAL REPORTS

The Insurer has the right and the claimant shall afford to the Insurer, an opportunity to examine the person of the insured person when and as often as it reasonably requires while the claim is pending, and also, in the case of the death of the insured person, to make an autopsy subject to the law relating to autopsies.

(5) "ATTENDING PHYSICIAN" DEFINED

"Attending physician" shall mean a person who legally engages in the practice of medicine or surgery, or both.

(6) RELEASE

Notwithstanding any release provided for under the relevant sections of **The Insurance Act** the Insurer may demand, as a condition precedent to payment of any amount under this section of the policy, a release in favour of the insured and the Insurer from liability to the extent of such payment from the insured person or his personal representative or any other person.

(7) WHEN MONEYS PAYABLE

- (a) All amounts payable under this section, other than benefits under Part II of subsection 2, shall be paid by the Insurer within 30 days after it has received proof of claim. The initial benefits for loss of time under Part II of subsection 2 shall be paid within 30 days after it has received proof of claim, and payments shall be made thereafter within each 30-day period while the Insurer remains liable for payments if the insured person, whenever required to do so, furnishes prior to payment proof of continuing disability.
- (b) No person shall bring an action to recover the amount of a claim under this section unless the requirements of provisions 3 and 4 are complied with, nor until the amount of the loss has been ascertained as provided in this section.
- (c) Every action or proceeding against the Insurer for the recovery of a claim under this section shall be commenced within one year from the date on which the cause of action arose and not afterwards.

(8) LIMITATION ON BENEFIT PAYABLE

Where a person is entitled to benefits under more than one contract providing insurance of the type set forth in subsection 2, he or his personal representative or any person claiming through or under him by virtue of the Fatal Accidents Act, may recover only an amount equal to one benefit.

In so far as applicable the general provisions, definitions, exclusions and statutory conditions of the policy also apply.

SECTION C — LOSS OF OR DAMAGE TO INSURED AUTOMOBILE

The Insurer agrees to indemnify the insured against direct and accidental loss of or damage to the automobile, including its equipment

Subsection 1 — ALL PERILS — from all perils;

Subsection 2 — COLLISION OR UPSET — caused by collision with another object or by upset;

Subsection 3 — COMPREHENSIVE — from any peril other than by collision with another object or by upset; The words "another object" as used in this subsection 3 shall be deemed to include (a) a vehicle to which the automobile is attached and (b) the surface of the ground and any object therein or thereon. Loss or damage caused by missiles, falling or flying objects, fire, theft, explosion, earthquake, windstorm, hail, rising water, malicious mischief, riot or civil commotion shall be deemed loss or damage caused by perils for which insurance is provided under this subsection 3.

Subsection 4 — SPECIFIED PERILS — caused by fire, lightning, theft or attempt thereof, windstorm, earthquake, hail, explosion, riot or civil commotion, falling or forced landing of aircraft or of parts thereof, rising water, or the stranding, sinking, burning, derailment or collision of any conveyance in or upon which the automobile is being transported on land or water;

DEDUCTIBLE CLAUSE

Each occurrence causing loss or damage covered under any subsection of section C except loss or damage caused by fire or lightning or theft of the entire automobile covered by such subsection, shall give rise to a separate claim in respect of which the Insurer's liability shall be limited to the amount of loss or damage in excess of the amount deductible, if any, stated in the applicable subsection of section C of item 4 of the application.

EXCLUSIONS

The Insurer shall not be liable,

- (1) under any subsection of section C for loss or damage
 - (a) to tires or consisting of or caused by mechanical fracture or breakdown of any part of the automobile or by rusting, corrosion, wear and tear, freezing, or explosion within the combustion chamber, unless the loss or damage is coincident with other loss or damage covered by such subsection or is caused by fire, theft or malicious mischief covered by such subsection; or
 - (b) caused by the conversion, embezzlement, theft or secretion by any person in lawful possession of the automobile under a mortgage, conditional sale, lease or other similar written agreement; or
 - (c) caused by the voluntary parting with title or ownership, whether or not induced to do so by any fraudulent scheme, trick, device or false pretense; or
 - (d) caused directly or indirectly by contamination by radioactive material; or
 - (e) to radios designed both for transmitting and receiving or their equipment; or
 - (f) to contents of trailers or to rugs or robes; or
 - (g) to tapes and equipment for use with a tape player or recorder when such tapes or equipment are detached therefrom; or
 - (h) where the insured drives or operates the automobile
 - (i) while under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the automobile; or
 - (ii) while in a condition for which he is convicted of an offence under section 234 or section 236 of the Criminal Code (Canada) or under or in connection with circumstances for which he is convicted of an offence under section 235(2) of the Criminal Code (Canada); or
 - (i) where the insured permits, suffers, allows or connives at the use of the automobile by any person contrary to the provisions of (h).

- (2) under subsections 3 (Comprehensive), 4 (Specified Perils) only, for loss or damage caused by theft by any person or persons residing in the same dwelling premises as the insured, or by any employee of the insured engaged in the operation, maintenance or repair of the automobile whether the theft occurs during the hours of such service or employment or not.

**See also General Provisions, Definitions, Exclusions
and Statutory Conditions of this policy**

ADDITIONAL AGREEMENTS OF INSURER

- (1) Where loss or damage arises from a peril for which a premium is specified under a subsection of this section, the Insurer further agrees:
- (a) to pay general average, salvage and fire department charges and customs duties of Canada or of the United States of America for which the Insured is legally liable;
 - (b) to waive subrogation against every person who, with the insured's consent, has care, custody or control of the automobile, provided always that this waiver shall not apply to any person (1) having such care, custody or control in the course of the business of selling, repairing, maintaining, servicing, storing or parking automobiles, or (2) who has committed a breach of any condition of this policy;
 - (c) to indemnify the insured and any other person who personally drives a temporary substitute automobile as defined in the General Provisions of this policy against the liability imposed by law or assumed by the insured or such other person under any contract or agreement for direct and accidental physical loss or damage to such automobile and arising from the care, custody and control thereof; provided always that:
 - (i) such indemnity is subject to the deductible clause and exclusions of each such subsection;
 - (ii) if the owner of such automobile has or places insurance against any peril insured by this section, the indemnity provided herein shall be limited to the sum by which the deductible amount, if any, of such other insurance exceeds the deductible amount stated in the applicable subsection of this policy;
 - (iii) the Additional Agreements under section A of this policy shall, insofar, as they are applicable, extend to the indemnity provided herein.
- (2) Loss of Use by Theft—Where indemnity is provided under subsections 1, 3 or 4 of section C hereof the Insurer further agrees, following a theft of the entire automobile covered thereby, to reimburse the insured for expense not exceeding \$8.00 for any one day nor totalling more than \$240.00 incurred for the rental of a substitute automobile including taxicabs and public means of transportation. Reimbursement is limited to such expense incurred during the period commencing seventy-two hours after such theft has been reported to the Insurer or the police and terminating, regardless of the expiration of the policy period, (a) upon the date of the completion of repairs to or the replacement of the property lost or damaged, or (b) upon such earlier date as the Insurer makes or tenders settlement for the loss or damage caused by such theft.

AGREEMENT OF INSURED

The insured, if engaged in the business of selling, repairing or servicing automobiles, agrees in the event of loss or damage for which indemnity is provided by any subsection(s) of section C of this policy to replace the property or make the necessary repairs at the actual cost to the insured if so requested by the Insurer.

GENERAL PROVISIONS, DEFINITIONS AND EXCLUSIONS

1. TERRITORY

This policy applies only while the automobile is being operated, used, stored or parked within Canada, the United States of America or upon a vessel plying between ports of those countries.

2. OCCUPANT DEFINED

In this policy the word "occupant" means a person driving, being carried in or upon or entering or getting on to or alighting from an automobile.

3. CONSENT OF OWNER

No person shall be entitled to indemnity or payment under this policy who is an occupant of any automobile which is being used without the consent of the owner thereof.

4. GARAGE PERSONNEL EXCLUDED

No person who is engaged in the business of selling, repairing, maintaining, storing, servicing or parking automobiles shall be entitled to indemnity or payment under this policy for any loss, damage, injury or death sustained while engaged in the use or operation of or while working upon the automobile in the course of that business or while so engaged is an occupant of the described automobile or a newly acquired automobile as defined in this policy, unless the person is the owner of such automobile or his employee or partner.

5. AUTOMOBILE DEFINED

In this policy except where stated to the contrary the words "the automobile" mean:

Under sections A (Third Party Liability), B (Accident Benefits), C (Loss of or Damage to Insured Automobile)

- (a) The Described Automobile—an automobile, trailer or semi-trailer specifically described in the policy or within the description of insured automobiles set forth therein;
- (b) A Newly Acquired Automobile—an automobile, ownership of which is acquired by the insured and, within fourteen days following the date of its delivery to him, notified to the Insurer in respect of which the insured has no other valid insurance, if either it replaces an automobile described in the application or the Insurer insures (in respect of the section or subsection of the Insuring Agreements under which claim is made) all automobiles owned by the insured at such delivery date and in respect of which the insured pays any additional premium required; provided however, that insurance hereunder shall not apply if the insured is engaged in the business of selling automobiles;

and under sections A (Third Party Liability), B (Accident Benefits) only

- (c) A Temporary Substitute Automobile—an automobile not owned by the insured, nor by any person or persons residing in the same dwelling premises as the insured, while temporarily used as the substitute for the described automobile which is not in use by any person insured by this policy, because of its breakdown, repair, servicing, loss, destruction or sale;
- (d) Any automobile of the private passenger or station wagon type, other than the described automobile, while personally driven by the insured, or by his or her spouse if residing in the same dwelling premises as the insured, provided that
 - (i) the described automobile is of the private passenger or station wagon type;
 - (ii) the insured is an individual or are husband and wife;
 - (iii) neither the insured nor his or her spouse is driving such automobile in connection with the business of selling, repairing, maintaining, servicing, storing or parking automobiles;
 - (iv) such other automobile is not owned or regularly or frequently used by the insured or by any person or persons residing in the same dwelling premises as the Insured;
 - (v) such other automobile is not owned, hired or leased by an employer of the insured or by an employer of any person or persons residing in the same dwelling premises as the insured;
 - (vi) such other automobile is not used for carrying passengers for compensation or hire or for commercial delivery;
- (e) If the Insured is a corporation, unincorporated association or registered co-partnership, any automobile of the private passenger or station wagon type, other than the described automobile, while personally driven by the employee or partner for whose regular use the described automobile is furnished, or by his or her spouse if residing in the same dwelling premises as such employee or partner, provided that
 - (i) neither such employee or partner or his or her spouse is the owner of an automobile of the private passenger or station wagon type;
 - (ii) the described automobile is of the private passenger or station wagon type;
 - (iii) neither such employee, partner or spouse is driving the automobile in connection with the business of selling, repairing, maintaining, servicing, storing or parking automobiles;
 - (iv) such other automobile is not owned, hired or leased or regularly or frequently used by the insured or such employee or by any partner of the insured or by any persons residing in the same dwelling premises as any of the aforementioned persons;
 - (v) such other automobile is not used for carrying passengers for compensation or hire or commercial delivery;
- (f) Owned Trailer—a trailer owned by the insured, not described in this policy, other than a trailer designed or used for passenger carrying, demonstration, sales, office or dwelling purposes;
- (g) Non-owned Trailer—a trailer not owned by the insured used in connection with the automobile.

6. TWO OR MORE AUTOMOBILES

- (a) When two or more automobiles are described hereunder (i) with respect to the use or operation of such described automobiles, each automobile shall be deemed to be insured under a separate policy; (ii) with respect to the use or operation of an automobile not owned by the insured, the limit of the insurer's liability shall not exceed the highest limit applicable to any one described automobile;
- (b) When the insured owns two or more automobiles which are insured as described automobiles under two or more automobile insurance policies, the limit of the insurer under this policy with respect to the use or operation of an automobile not owned by the insured shall not exceed the proportion that the highest limit applicable to any one automobile described in this policy bears to the sum of the highest limits applicable under each policy and in no event shall exceed such proportion of the highest limit applicable to any one automobile under any policy;
- (c) A motor vehicle and one or more trailers or semi-trailers attached thereto shall be held to be one automobile with respect to the limit(s) of liability under Insuring Agreements A and B and separate automobiles with respect to the limit(s) of liability, including any deductible provisions, under Insuring Agreement C.

7. WAR RISKS EXCLUDED

The Insurer shall not be liable under section B or C of this policy for any loss, damage, injury or death caused directly or indirectly by bombardment, invasion, civil war, insurrection, rebellion, revolution, military or usurped power, or by operation of armed forces while engaged in hostilities, whether war be declared or not.

8. EXCLUDED USES

Unless coverage is expressly given by an endorsement of this policy, the Insurer shall not be liable under this policy while:

- (a) the automobile is rented or leased to another; provided that the use by an employee of his automobile on the business of his employer and for which he is paid shall not be deemed the renting or leasing of the automobile to another;
- (b) the automobile is used to carry explosives, or to carry radioactive material for research, education, development or industrial purposes, or for purposes incidental thereto;
- (c) the automobile is used as a taxicab, public omnibus, livery, jitney or sightseeing conveyance or for carrying passengers for compensation or hire; provided that the following uses shall not be deemed to be the carrying of passengers for compensation or hire:
 - (i) the use by the insured of his automobile for the carriage of another person in return for the former's carriage in the automobile of the latter;
 - (ii) the occasional and infrequent use by the insured of his automobile for the carriage of another person who shares the cost of the trip;
 - (iii) the use by the insured of his automobile for the carriage of a temporary or permanent domestic servant of the insured or his spouse;
 - (iv) the use by the insured of his automobile for the carriage of clients or customers or prospective clients or customers;
 - (v) the occasional and infrequent use by the insured of his automobile for the transportation of children to or from school or school activities conducted within the educational program.

ENDORSEMENT RESTRICTING OCCUPANT COVERAGE IN COMMERCIAL AUTOMOBILES

The Insurer shall not be liable under section A of this policy for any loss or damage resulting from, or payment in respect of, bodily injury to or death of any occupant of the automobile, if such automobile is other than the private passenger, station wagon or bus type if at the time of the accident more than THREE PERSONS (exclusive of the driver) are occupants of the automobile. Except as otherwise provided in this endorsement, all limits, terms, conditions, provisions, definitions and exclusions of this Policy shall have full force and effect.

STATUTORY CONDITIONS

In these Statutory Conditions, unless the context otherwise requires, the word "insured" means a person insured by this contract whether named or not. *With respect to Section B only Statutory Conditions 1, 8 and 9 shall apply.*

Material Change in Risk

1. (1) The insured named in this contract shall promptly notify the insurer or its local agent in writing of any change in the risk material to the contract and within his knowledge.
- (2) Without restricting the generality of the foregoing, the words "change in the risk material to the contract" include:
 - (a) any change in the insurable interest of the insured named in this contract in the automobile by sale, assignment or otherwise, except through change of title by succession, death or proceedings under the *Bankruptcy Act* (Canada);
 - and in respect of insurance against loss-of or damage to the automobile,
 - (b) any mortgage, lien or encumbrance affecting the automobile after the application for this contract;
 - (c) any other insurance of the same interest, whether valid or not, covering loss or damage insured by this contract or any portion thereof.

Prohibited Use by Insured

2. (1) The insured shall not drive or operate the automobile,
 - (a) unless he is for the time being either authorized by law or qualified to drive or operate the automobile; or
 - (b) while his licence to drive or operate an automobile is suspended or while his right to obtain a licence is suspended or while he is prohibited under order of any court from driving or operating an automobile; or
 - (c) while he is under the age of sixteen years or under such other age as is prescribed by the law of the province in which he resides at the time this contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued to him; or
 - (d) for any illicit or prohibited trade or transportation; or
 - (e) in any race or speed test.

Prohibited Use by Others

- (2) The insured shall not permit, suffer, allow or connive at the use of the automobile,
 - (a) by any person,
 - (i) unless that person is for the time being either authorized by law or qualified to drive or operate the automobile; or
 - (ii) while that person is under the age of sixteen years or under such other age as is prescribed by the law of the province in which he resides at the time this contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued to him; or
 - (b) by any person who is a member of the household of the insured while his licence to drive or operate an automobile is suspended or while his right to obtain a licence is suspended or while he is prohibited under order of any court from driving or operating an automobile; or
 - (c) for any illicit or prohibited trade or transportation; or
 - (d) in any race or speed test.

Requirements Where Loss or Damage to Persons or Property

3. (1) The insured shall,
 - (a) promptly give to the Insurer written notice, with all available particulars, of any accident involving loss or damage to persons or property and of any claim made on account of the accident;
 - (b) verify by statutory declaration, if required by the Insurer, that the claim arose out of the use or operation of the automobile and that the person operating or responsible for the operation of the automobile at the time of the accident is a person insured under this contract; and
 - (c) forward immediately to the Insurer every letter, document, advice or writ received by him from or on behalf of the claimant.
- (2) The insured shall not,
 - (a) voluntarily assume any liability or settle any claim except at his own cost; or
 - (b) interfere in any negotiations for settlement or in any legal proceeding.

- (3) The insured shall, whenever requested by the Insurer, aid in securing information and evidence and the attendance of any witness and shall co-operate with the Insurer, except in a pecuniary way, in the defence of any action or proceeding or in the prosecution of any appeal.

Requirements Where Loss or Damage to Automobile

4. (1) Where loss of or damage to the automobile occurs, the insured shall, if the loss or damage is covered by this contract,
 - (a) promptly give notice thereof in writing to the Insurer with the fullest information obtainable at the time;
 - (b) at the expense of the Insurer, and as far as reasonably possible, protect the automobile from further loss or damage; and
 - (c) deliver to the Insurer within ninety days after the date of the loss or damage a statutory declaration stating, to the best of his knowledge and belief, the place, time, cause and amount of the loss or damage, the interest of the insured and of all others therein, the encumbrances thereon, all other insurance, whether valid or not, covering the automobile and that the loss or damage did not occur through any wilful act or neglect, procurement, means or connivance of the insured.
- (2) Any further loss or damage accruing to the automobile directly or indirectly from a failure to protect it as required under subcondition 1 of this condition is not recoverable under this contract.
- (3) No repairs, other than those that are immediately necessary for the protection of the automobile from further loss or damage, shall be undertaken and no physical evidence of the loss or damage shall be removed,
 - (a) without the written consent of the Insurer; or
 - (b) until the Insurer has had a reasonable time to make the examination for which provision is made in statutory condition 5.

Examination of Insured

- (4) The insured shall submit to examination under oath, and shall produce for examination at such reasonable place and time as is designated by the Insurer or its representative all documents in his possession or control that relate to the matters in question, and he shall permit extracts and copies thereof to be made.

Insurer Liable for Cash Value of Automobile

- (5) The Insurer shall not be liable for more than the actual cash value of the automobile at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to that actual cash value with proper deduction for depreciation, however caused, and shall not exceed the amount that it would cost to repair or replace the automobile or any part thereof, with material of like kind and quality, but, if any part of the automobile is obsolete and out of stock, the liability of the Insurer in respect thereof shall be limited to the value of that part at the time of loss or damage, not exceeding the maker's latest list price.

Repair or Replacement

- (6) Except where an appraisal has been made, the Insurer, instead of making payment, may, within a reasonable time, repair, rebuild or replace the property damaged or lost with other of like kind and quality if, within seven days after the receipt of the proof of loss, it gives written notice of its intention to do so.

No Abandonment; Salvage

- (7) There shall be no abandonment of the automobile to the Insurer without the Insurer's consent. If the Insurer exercises the option to replace the automobile or pays the actual cash value of the automobile, the salvage, if any, shall vest in the Insurer.

In Case of Disagreement

- (8) In the event of disagreement as to the nature and extent of the repairs and replacements required, or as to their adequacy, if effected, or as to the amount payable in respect of any loss or damage, those questions shall be determined by appraisal as provided under *The Insurance Act* before there can be recovery under

this contract, whether the right to recover on the contract is disputed or not, and independently of all other questions. There shall be no right to an appraisal until a specific demand therefor is made in writing and until after proof of loss has been delivered.

Inspection of Automobile

5. The insured shall permit the Insurer at all reasonable times to inspect the automobile and its equipment.

Time and Manner of Payment of Insurance Money

6. (1) The Insurer shall pay the insurance money for which it is liable under this contract within sixty days after the proof of loss has been received by it or, where an appraisal is made under subcondition 8 of statutory condition 4, within fifteen days after the award is rendered by the appraisers.

When Action May be Brought

- (2) The insured shall not bring an action to recover the amount of a claim under this contract unless the requirements of statutory conditions 3 and 4 are complied with or until the amount of the loss has been ascertained as therein provided or by a judgment against the insured after trial of the issue or by agreement between the parties with the written consent of the Insurer.

Limitation of Actions

- (3) Every action or proceeding against the Insurer under this contract in respect of loss or damage to the automobile shall be commenced within one year next after the happening of the loss and not afterwards, and in respect of loss or damage to persons or property shall be commenced within one year next after the cause of action arose and not afterwards.

Who May Give Notice and Proofs of Claim

7. Notice of claim may be given and proofs of claim may be made by the agent of the insured named in this contract in case of absence or inability of the insured to give the notice or make the proof, such absence or inability being satisfactorily accounted for or, in the like case or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

Termination

8. (1) This contract may be terminated,
 - (a) by the Insurer giving to the insured fifteen days' notice of termination by registered mail or five days' written notice of termination personally delivered;
 - (b) by the insured at any time on request.
- (2) Where this contract is terminated by the Insurer,
 - (a) the Insurer shall refund the excess of premium actually paid by the insured over the *pro rata* premium for the expired time, but in no event shall the *pro rata* premium for the expired time be deemed to be less than any minimum retained premium specified; and
 - (b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to the amount, in which case the refund shall be made as soon as practicable.
- (3) Where this contract is terminated by the insured, the Insurer shall refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time, but in no event shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.
- (4) The refund may be made by money, postal or express company money order or cheque payable at par.
- (5) The fifteen days mentioned in clause a of subcondition 1 of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.

Notice

9. Any written notice to the Insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the Insurer in the Province. Written notice may be given to the insured named in this contract by letter personally delivered to him or by registered mail addressed to him at his latest post office address as notified to the Insurer. In this condition, the expression "registered" means registered in or outside Canada.

CHAPTER 3

An Overview of the Standard Automobile Policy

The provisions of the insurance policy govern the circumstances under which, and the extent to which, the insurance system distributes losses arising out of motor vehicle accidents. It was therefore appropriate for the Committee to focus its attention at the outset of its investigations upon the policy itself. The entire policy is set out on the preceding pages and the relevant portion is also set out at the beginning of each of the following chapters where that portion is discussed.

Mandatory Use of Standard Forms

The coverage currently in effect in the Province of Ontario is set out in the “Standard Automobile Policy”. Section 201 of the Insurance Act provides that no insurer shall use a form of application, policy, endorsement or renewal or continuation certificate in respect of automobile insurance other than a form approved by the Superintendent of Insurance, who is authorized to approve such forms and to publish the standard owner’s policy in the Ontario Gazette. The form of policy that is currently in use was approved and published in the Ontario Gazette on May 15, 1976¹. The effect of these provisions is to establish a universal form of standard automobile policy that is the only form that may be issued in Ontario, and a standardized series of related forms.

The Committee recognizes the need for this mandatory standardization of the policy form. It is quite apparent that, while the policy is a contract in form, it is inevitably something less than a contract in substance, in the sense that each policy could hardly be the result of a free process of bargain and agreement between the insured and the insurer.

The Committee recommends that the policy should continue to be in a mandatory standard form and that the form should continue to be authorized by regulation as currently provided for in the Act.

1. This form of standard automobile policy has been adopted in substance as the standard mandatory automobile policy in all the Provinces in Canada. As changes have been made in the Ontario policy from time to time in the course of the evolution of the form that is currently in effect, they have been generally adopted by other provinces. This process of standardization has been the result of the efforts of the Advisory Committee on Automobile Insurance Forms of the Association of Superintendents of Insurance of the Provinces of Canada. Despite the standardization of the mandatory forms, minimum limits vary from province to province.

Parts of the Policy

The standard automobile policy consists of the following seven parts:

1. **The Application Form:** This is the form of application that is made by the insured for the issue of the policy. When the policy has been issued, the application becomes an integral part of the policy. This part of the policy is discussed in Chapter 4 of this Report.
2. **Section A — Third Party Liability:** This Section provides indemnity against liability for bodily injury to or death of any person or damage to property. The minimum limit is currently \$100,000 for all claims arising from any one accident. This Section of the policy is discussed in Chapters 5 and 6.
3. **Section B — Accident Benefits:** This Section is most clearly understood if it is recognized that it is in reality a “policy within a policy” and if it is read and studied independently from Sections A and C of the standard automobile policy. It provides for a system of basic, essential, accident benefit coverage. Those whom it insures include
 - (a) the occupants of the insured vehicle,
 - (b) the insured,
 - (c) members of the insured’s “family” (as defined in the Section) while they are occupants of any other automobile,
 - (d) the insured while he is an occupant of any other automobile,
 - (e) members of the insured’s “family” who are struck by any other automobile,
 - (f) any person struck by the insured automobile, and
 - (g) the insured, if he is struck by another automobile.

The benefits include lump sum payments for loss of life, certain payments for out-of-pocket ambulance, medical and hospital costs, certain allowances for loss of income and rehabilitation costs. While payments under this Section are fixed minimal amounts only, they are payable quite regardless of whether the person killed or injured was at fault.

Section B is a mandatory section that must be included in all standard automobile policies which include third party liability coverage and must be for the exact amounts established by law and set out in the Section.

Section B is dealt with in Chapter 7 of this Report.

4. **Section C — Loss of or Damage to Insured Automobile:** This Section covers the automobile, in the terms fixed by the approved policy form in respect of loss or damage by
 - sub-section 1 — “all perils”, or

- sub-section 2 — “collision or upset”,
- sub-section 3 — “comprehensive”, which may include any peril other than collision or upset; or
- sub-section 4 — “specified perils” which, put simply, includes most non-traffic accident perils and excludes collision coverage.

This Section is not a mandatory section and so it need not be included in a policy unless the insured wishes such coverage and the insurer agrees to provide it. However, if such coverage is to be in force, its terms must be exactly those that are set out in the standard automobile policy. There is no prescribed deductibility feature nor is there any limit for coverage under Section C. As a result the deductibility amount of the coverage may vary from policy to policy.

This Section of the policy is discussed in Chapters 8 and 9 of this Report.

5. General Provisions, Definitions and Exclusions: These apply to all sections of the entire policy.
6. Endorsement Restricting Occupant Coverage in Commercial Vehicles: This provision excludes the insurer from liability under Section A in certain limited situations. It is discussed in this chapter.
7. Statutory Conditions: These are general conditions imported word-for-word into the policy from the Insurance Act, where they are encoded in Section 205. They apply to every Section of the entire policy.

The Committee has had the opportunity of examining all of the seven parts of the standard automobile policy that are described above, and indeed has examined these carefully, word by word. In the course of this long verbatim examination it has had the benefit of detailed commentary from the Superintendent of Insurance and various specialized members of his staff, all of whom had had extensive experience with the way in which the terms of the policy operate in actual practice. It also had the benefit of commentary from members of the industry, including agents and adjusters.

Rewriting the Policy

One of the Committee’s observations during the course of its detailed study of the terms of the standard automobile policy was that the terminology and the language generally were extremely difficult to understand. Despite the fact that all the Committee members had had some experience in studying formal documents of a statutory nature, they nevertheless found the terms of the policy to be obscure in the extreme. While it would be simplistic to suggest that such a document can be converted into easy reading material, the Committee considers that the

standard policy could be re-drafted so that it will be comprehensible to anyone who is prepared to exercise reasonable care and effort in reading and studying the document.

The Committee accordingly recommends a complete re-writing of the standard automobile policy so as to convert it into as clear, unambiguous and readily readable a document as its nature will permit.

Delivery of the Policy

Section 203 of the Act provides that the insurer may, instead of issuing the policy, issue a certificate in a form approved by the Superintendent. When issued the certificate is to be of the same force and effect as if it were in fact the standard owner's policy approved by the Superintendent. However, the Act further provides that the insurer must, at the request of an insured, provide a copy of the standard automobile policy in the full wording approved by the Superintendent. The Committee noted from the evidence before it that this provision was in fact followed in practice by the insurance companies and that normally an insured person received merely a certificate of insurance, which is in abbreviated form, rather than the policy itself. The Committee recognized that there have been reasons of convenience in the past for allowing the companies to follow the practice that is authorized by Section 203. The Committee also presumes that so long as the form of the policy is as difficult to understand as it now is, there will probably be little merit in forwarding a copy of the policy to the insured, at least without his actually asking for it. On the other hand, the Committee is confident that its recommendation set out above, — that the policy be redrafted and converted into language that is as simple and understandable as possible, is eminently feasible.

The Committee therefore recommends that on completion of this project it be mandatory that the insurer provide the insured with a copy of the policy in its clarified, approved form, and that the provision for substituting certificates of policies be dispensed with. However it should be necessary to do so only when the policy is first issued or when terms are changed. The mere act of renewing should not necessitate the delivery of a further copy of the policy.

Endorsement Restricting Occupant Coverage in Commercial Vehicles

A special provision set out on page 10 of the Standard Automobile Policy provides that

“The insurer shall not be liable under Section A — Third Party Liability for any loss or damage resulting from, or payment in respect of, bodily injury to or death of any occupant of the automobile if

such automobile is other than the private passenger, station wagon or bus type if at the time of the accident more than three persons (exclusive of the driver) are occupants of the automobile. Except as otherwise provided in this endorsement, all limits, terms, conditions, provisions, definitions and exclusions of this Policy shall have full force and effect.”

The Committee disapproves of this restriction on the insurer’s liability and so **the Committee recommends** that the provision in the application and the restriction in the policy be deleted in their entirety. In making this recommendation, the Committee is concerned with protecting the insured and others who might otherwise receive compensation under the policy from any unforeseeable misapplication of the exclusion. For example, there is currently in use a type of special body truck known as a crew cab truck which is designed to carry work crews of up to six persons. It would appear that such a vehicle would be included in the category affected by the exclusionary clause, although such an exclusion was presumably not intended or should not have been intended to be the subject of the exclusion. Other similar distortions of the application of the clause are always possible.

The Committee also considers that this exclusion violates the fundamental principles of loss distribution that are basic to the theme of this Report, as explained in Chapter 2.

The Committee notes that Section 216 of the Insurance Act provides that, “subject to the limitations and exclusions of the endorsement, the insurer may provide by endorsement to a contract evidenced by a motor vehicle liability policy . . . that it shall not be liable for loss or damage . . . resulting from bodily injury to or the death of any person being carried in or upon or entering or getting on to or alighting from the automobile”. This provision was to have been repealed by Section 14 of the Insurance Amendment Act 1973, but the section of the amending statute providing for the repeal has not as yet been proclaimed in force by the Lieutenant-Governor-in-Council. **The Committee recommends** the proclamation of the repealing provision, as a part of the process of doing away with the exclusionary clause in the policy.

Statutory Conditions — “Cash Value” of Automobile

The Committee has also examined the statutory conditions which are incorporated into and form part of the standard automobile policy with a view to making recommendations as to amendments.

The first of these statutory conditions on which the Committee wishes to comment is Statutory condition 4 (5) which provides as follows:

“The Insurer shall not be liable for more than the actual cash value of the automobile at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to that actual cash value with proper deduction for depreciation, however caused, and shall not exceed the amount that it would cost to repair or replace the automobile, or any part thereof, with material of like kind and quality, but, if any part of the automobile is obsolete and out of stock, the liability of the Insurer in respect thereof shall be limited to the value of that part at the time of loss or damage, not exceeding the maker’s latest list price.”

The Committee has had substantial difficulty with the language of this provision and has concluded that the difficulty is attributable to ambiguity and confusion in the way in which it is worded. **The Committee accordingly recommends** that this provision be re-drafted so as to clarify its meaning. In particular the following items should be made especially clear:

- (a) that while the insurer shall not be liable for any more than the actual cash value of the insured automobile at the time the loss or damage occurs, the reference to “actual cash value” is a reference to the “*retail*” price that would have to be paid to replace the automobile, rather than the “*wholesale*” price at which the automobile could have been sold immediately prior to the occurrence of the loss or damage.
- (b) The phrase “with proper deduction for depreciation” is redundant and should be deleted.
- (c) that the insurer is not to be entitled to call upon the insured to contribute toward the cost of repairs, even though the replacement parts are of a greater cost or value than the replaced parts, unless the total effect of repairing the automobile is to increase significantly the actual cash value of the entire vehicle after the repair work has been completed, over its actual cash value prior to the accident.

The Committee has found that the disputes and the abuses that have flowed from the present wording of this provision have been very substantial. However the Committee is satisfied that the foregoing recommendation will resolve the bulk of the conflict that has existed with regard to these repair disputes.

Limitation of Actions

Statutory condition 6 (3) requires that any action or proceeding against the insurer under the policy in respect of loss or damage to the automobile shall be commenced within one year next after the happen-

ing of the loss and not afterwards, and in respect of loss or damage to persons or property shall be commenced within one year next after the cause of action arose and not afterwards. **The Committee recommends** that the limitation periods contemplated by this condition be increased to two years.

This amendment will be in keeping with the recent amendment to The Highway Traffic Act² whereby the limitation period in that Act, which was formerly twelve months, was increased in 1975 to two years.

Limitation of Actions — The Railways Act

A further anomaly in limitation periods has come to the Committee's attention. The Railways Act, R.S.O. 1950 (sic) Chapter 331, Section 267, provides that all actions for any damage or injury sustained by reason of the construction or operation of a railway should be commenced within one year next after the time when such supposed damage is sustained or if there is a continuation of damage, within one year next after the doing or committing of such damage ceases and not afterward.

In *Gill v. Toronto Transit Commission*, an unreported judgment of the Divisional Court of the Supreme Court of Ontario,³ the defendant contended that this limitation period prevented the making of a claim for damages arising out of an injury suffered on a stairway of the T.T.C.'s St. George subway station. The court upheld this defence.

In 1969, The Ontario Law Reform Commission submitted its Report on Limitation of Actions and recommended the repeal of Section 267 (1) of The Railways Act and its replacement by a proposed new Limitations Act which would provide for a two year limitation period for all actions for damages for injury to the person or property, whether based on contract, tort or statutory duty.

The Committee recommends that Section 267 of the Railways Act be amended to provide for a limitation period of two years, upon substantially the same terms as those set out in Section 146 of The Highway Traffic Act as amended.

2. *The Highway Traffic Amendment Act, 1975* (No. 2) S. of O. 1975, Chapter 37, Section 1.

3. The judgment is set out in Appendix B.

S.P.F. No. 1
STANDARD AUTOMOBILE POLICY
(OWNER'S FORM)

Insurance Company"

(HEREINAFTER CALLED THE INSURER)

WHEREAS AN APPLICATION HAS BEEN MADE BY THE APPLICANT (HEREINAFTER CALLED THE INSURED) TO THE INSURER FOR A CONTRACT OF AUTOMOBILE INSURANCE AND THE SAID APPLICATION FORMS PART OF THIS CONTRACT OF INSURANCE AND IS AS FOLLOWS:—
APPLICATION

AGENT

AT

ITEM 1
FULL NAME
AND

POSTAL
ADDRESS OF
THE APPLICANT
(INCLUDING COUNTY
OR DISTRICT)

ITEM 2. POLICY PERIOD:

FROM

TO

ITEM 3. PARTICULARS OF THE DESCRIBED AUTOMOBILE —

MODEL YEAR	TRADE NAME	SERIAL NUMBER	NO. OF CYL	TYPE OF BODY	MODEL NAME NUMBER OR C.C.	TRUCK GROSS WEIGHT

PURCHASED BY APPLICANT			CASH PURCHASE PRICE TO APPLICANT	STATE AMOUNT OF MORTGAGE LIEN OR ENCUMBRANCE	NAME AND ADDRESS OF LIENHOLDER OR MORTGAGEE TO WHOM, JOINTLY WITH THE APPLICANT, LOSS, IF ANY, UNDER SECTION C OF THE INSURING AGREEMENTS IS PAYABLE AS THEIR INTERESTS MAY APPEAR.
MONTH	YEAR	NEW OR USED	INCLUDING EQUIPMENT		
			\$	\$	NAME ADDRESS

ITEM 4. THIS APPLICATION IS MADE FOR INSURANCE AGAINST ONE OR MORE OF THE PERILS MENTIONED IN THIS ITEM, BUT FOR INSURANCE UNDER THE SECTION(S) OR SUB SECTION(S) FOR WHICH A PREMIUM IS SPECIFIED IN THIS ITEM AND NO OTHER AND UPON THE TERMS, CONDITIONS, PROVISIONS, DEFINITIONS AND EXCLUSIONS OF THE INSURER'S CORRESPONDING STANDARD POLICY FORM AND FOR THE FOLLOWING SPECIFIED LIMITS AND AMOUNTS

INSURING AGREEMENTS	PERILS	LIMITS AND AMOUNTS	PREMIUM
SECTION A THIRD PARTY LIABILITY	LEGAL LIABILITY FOR BODILY INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO PROPERTY	(EXCLUSIVE OF INTEREST AND COSTS) FOR LOSS OR DAMAGE RESULTING FROM BODILY INJURY TO OR THE DEATH OF ONE OR MORE PERSONS, AND FOR LOSS OR DAMAGE TO PROPERTY, REGARDLESS OF THE NUMBER OF CLAIMS ARISING FROM ANY ONE ACCIDENT	\$
SECTION B ACCIDENT BENEFITS	PAYMENTS FOR DEATH OR BODILY INJURY	AS STATED IN SECTION B OF THE POLICY	\$
	UNINSURED MOTORIST	AS STATED IN SECTION B OF THE POLICY	\$
SECTION C LOSS OF OR DAMAGE TO INSURED AUTOMOBILE	ALL PERILS	THIS POLICY CONTAINS A PARTIAL PAYMENT OF LOSS CLAUSE AMOUNT DEDUCTIBLE ON EACH SEPARATE CLAIM EXCEPT FOR LOSS OR DAMAGE BY FIRE OR LIGHTNING OR THEFT OF THE ENTIRE AUTOMOBILE.	\$
	2. COLLISION OR UPSSET		\$
	3. COMPREHENSIVE (EXCLUDING COLLISION OR UPSSET)		\$
	4. SPECIFIED PERILS (EXCLUDING COLLISION OR UPSSET)		\$

ENDORSEMENTS —

ENDORSEMENT RESTRICTING OCCUPANT COVERAGE IN COMMERCIAL AUTOMOBILES IS APPLICABLE HERETO	MINIMUM RETAINED PREMIUM IF POLICY CANCELLED	\$	TOTAL PREMIUM	\$
--	--	----	---------------	----

ITEM 5.	(A) STATE THE PURPOSES FOR WHICH THE AUTOMOBILE IS AND WILL BE CHIEFLY USED, IF THE USE IS STATED AS "PLEASURE," THAT WORD SHALL BE REGARDED AS INCLUDING THE USE OF THE AUTOMOBILE AS TRANSPORTATION BETWEEN THE PLACE OF RESIDENCE AND THE PLACE OF BUSINESS OF THE APPLICANT. (B) WILL THE AUTOMOBILE BE RENTED OR LEASED, OR USED FOR CARRYING PASSENGERS FOR COMPENSATION OR HIRE, OR FOR CARRYING EXPLOSIVES OR RADIOACTIVE MATERIAL? IF SO, STATE PARTICULARS. (C) WILL THE AUTOMOBILE BE USED FOR THE TRANSPORTATION OF GOODS FOR COMPENSATION? IF SO, STATE CLASS OF LICENSE OR CERTIFICATE AND RADIUS OF OPERATIONS. (D) WILL THE AUTOMOBILE BE OPERATED BY ANY PERSON SUFFERING FROM THE LOSS OF, OR LOSS OF USE OF, AN EYE, HAND, FOOT OR LIMB, OR WHO IS PHYSICALLY OR MENTALLY DISABLED TO AN EXTENT THAT MIGHT AFFECT THE SAFE OPERATION OF AN AUTOMOBILE?	(A) (B) (C) (D)
ITEM 6.	(A) HAS ANY LICENSE, PERMIT, REGISTRATION CERTIFICATE OR OTHER LIKE AUTHORITY, ISSUED TO THE APPLICANT OR A MEMBER OF HIS HOUSEHOLD UNDER ANY LAW OR STATUTE OF ANY PROVINCE, STATE OR COUNTRY RELATING TO AUTOMOBILES, TO THE KNOWLEDGE OF THE APPLICANT, BEEN, OR CONTINUED TO BE, SUSPENDED OR CANCELLED WITHIN THE THREE YEARS PRECEDING THIS APPLICATION? IF SO, STATE PARTICULARS. (B) HAS ANY INSURER, TO THE KNOWLEDGE OF THE APPLICANT, CANCELLED, DECLINED OR REFUSED TO RENEW OR ISSUE AUTOMOBILE INSURANCE TO THE APPLICANT OR SPOUSE WITHIN THE THREE YEARS PRECEDING THIS APPLICATION? IF SO, STATE NAME OF INSURER.	(A) (B)

ITEM 7.	STATE PARTICULARS OF ALL ACCIDENTS, LOSSES OR CLAIMS ARISING OUT OF THE OWNERSHIP, USE OR OPERATION OF ANY AUTOMOBILE BY THE APPLICANT OR SPOUSE WITHIN THE THREE YEARS PRECEDING THIS APPLICATION.	INJURY TO PERSONS DAMAGE TO PROPERTY OF OTHERS DAMAGE TO OWNED OR OPERATED AUTOMOBILE BY (A) COLLISION (B) OTHER CAUSES
---------	---	---

ITEM 8.	UNLESS OTHERWISE STATED, THE APPLICANT IS BOTH THE REGISTERED OWNER AND ACTUAL OWNER OF THE DESCRIBED AUTOMOBILE. IF NOT, STATE THE NAME OF (A) THE REGISTERED OWNER (B) THE ACTUAL OWNER
---------	---

ITEM 9.	ALL THE STATEMENTS IN THIS APPLICATION ARE TRUE AND THE APPLICANT HEREBY APPLIES FOR A CONTRACT OF AUTOMOBILE INSURANCE TO BE BASED ON THE TRUTH OF THE SAID STATEMENTS
---------	---

ITEM 10. Where, (a) an applicant for a contract, (i) gives false particulars of the described automobile to be insured to the prejudice of the Insurer, or (ii) knowingly misrepresents or fails to disclose in the application any fact required to be stated therein; (b) the insured contravenes a term of the contract or commits a fraud; or (c) the insured wilfully makes a false statement in respect of a claim under the contract, a claim by the insured is invalid and the right of the insured to recover indemnity is forfeited. A consumer report containing personal, credit, factual or investigative information about the applicant may be sought in connection with this application for insurance or any renewal, extension or variation thereof.

COUNTERSIGNED

AUTHORIZED REPRESENTATIVE

CHAPTER 4

The Application Form

The form of application for the issuance of the standard automobile policy is prescribed by law,¹ as has been noted. The Superintendent of Insurance determines the form and it is mandatory that it be used in all cases. The application form that is currently approved and in use is set out on the opposite page.

The Act further provides, by Section 203, that the application must be embodied in, endorsed upon or attached to the policy when issued by the insurer. Indeed the approved form of standard automobile policy expressly provides that the application forms a part of the contract of insurance.

The application form has four principal purposes:

- (a) It identifies the parties to the insurance policy and the vehicle to which it relates.
- (b) It sets out representations that have been made, on the basis of which the insurer decides whether to accept the application. These also form a substantial part of the information by which the insurer classifies the applicant for the purpose of calculating his premium.
- (c) It gives the details of the coverage to be provided by the policy: third party liability; accident benefits; all perils, collision or upset, comprehensive or specified perils. It also indicates the limits of coverage and, where applicable, the deductibility provision. In addition it also provides particulars of the premium to be charged for each form of coverage that is applied for.
- (d) It purports to warn the applicant of the possible consequences that he may incur if he makes any misrepresentation.
- (e) It also purports to warn the applicant that the insurer may seek a credit report containing personal, credit, factual or investigative information about himself. This warning is given in keeping with the provisions of Section 10 of the Consumer Reporting Act, 1973. This section requires that such notification be given before the report is requested. However the Committee notes that evidence before it indicated that frequently the application form is filled out by the company's representative and is not seen by the applicant until some time after the policy is issued.

1. *The Insurance Act*, Section 201

It is obvious that the form of application is vital to the entire procedure of processing applications for insurance. Despite this, the Committee found that application forms are often completed in a haphazard way. Agents or other sellers of insurance are, as the Committee has found, frequently casual and often inaccurate in the preparation of the forms. In addition, it very frequently happens that the application is never signed by the applicant.

The Committee recommends that the application form be substantially revised so that it can better accomplish the purposes set out above. Some of the necessary changes are of a substantive nature, while others are more cosmetic in nature. Both types of change are equally important if the application form is to accomplish its purposes with clarity.

The Committee's specific recommendations are as follows:

1. The form should state in the clearest terms that certain designated questions are being asked for the purpose of classifying the applicant so that his premium can be calculated. It should also make it clear to the insurer, as well as the insured, that the information required by the questions constitutes all of the information that may be taken into consideration in calculating the applicant's premium. (The Committee has dealt with the undesirable practice of using subjective information in the underwriting process in Chapter 12.) In other words, both parties should be required to make full disclosure,—in the case of the insurer, of *all* the information it will be using for making its underwriting decisions; and in the case of the insured, of truthful answers to the underwriter's legitimate questions.
2. The application form, when completed, should show the insured in clear terms the precise class to which he has been assigned for premium calculation purposes and exactly why he was assigned to that class and that the premium payable is in fact the premium applicable to that class under his insurer's rate manual.
3. The design of the application form should be changed so that it is more readily understandable. Some of the recommendations that follow will help to accomplish this.
4. The application requires the disclosure of the applicant's occupation or business and goes on to require disclosure, in the case of a married woman, of the husband's occupation or business. The Committee views this requirement as a mere holdover from an era when the nature of the prevailing relationships between spouses was different from what it currently is and recommends that this requirement be deleted. In making this recommendation, the

Committee has had due regard for the argument that the requested information may be germane to the classification system and the process of premium calculation. But this suggestion is rejected since occupational groupings do not form a part of the acceptable classification system. It is also noteworthy that the request is not for a *spouse's* occupation or business, but only for a *husband's* occupation or business.

5. The application provides that the term of the policy is to begin on a fixed date and will end on a fixed date. The Committee considered this definite termination date and noted that there was a real danger of a policy's terminating without being renewed because of the oversight of the insured, the insurer or the agent or broker. In view of the potentially catastrophic effect of such an inadvertent termination upon the insured, and indeed upon third parties who might be involved in an accident with the insured, the Committee concluded that a reasonable "grace period" should be allowed. Accordingly, a provision should be included in the standard automobile policy that, notwithstanding the fixed termination date set out in the application form, the policy will continue in force for ten further days unless the policy was formally terminated by due notice given by either the insurer or the insured prior to the end of the fixed term set out in the application form.
6. It is obviously extremely important that the policy-holder be given every opportunity to understand very clearly the exact limits of the coverage that he has received. The application form should therefore be redesigned so as to show in clear, bold-face type in Item 4 that the only coverage provided by the policy is that for which a premium is specified on the face of the application form and that there is no other coverage provided by the policy.
7. So long as there is a monetary limit on the insurer's liability under Section A Third Party Liability, the term "*exclusive* of interest and costs" should be changed to "*plus* interest and costs" for the sake of greater clarity.
8. In the space that deals with "Section B Accident Benefits" the line between the words "Payments for death or bodily injury . . ." and "uninsured motorist . . ." should be deleted so as to emphasize that the benefits from the uninsured motorist provision are a part of the Section B Accident Benefits programme. While this is a minor item, it illustrates the importance of reviewing even the smallest detail if the application form is to be readily understandable.
9. The words "Endorsements — endorsement restricting occupant coverage in commercial automobiles is applicable hereto" should

be deleted upon the adoption of the Committee's recommendation in Chapter 3.

10. The Committee considers that the mere fact that an automobile is used for car pooling should not take it out of the private passenger category and in fact this would appear to be the intent of the policy. However, the Committee does not consider that this is made entirely clear by the present wording of the policy. It is therefore advisable to avoid any possible ambiguity by making the following two amendments:
 - In Item 5(B) of the application form, after the words “. . . used for carrying passengers for compensation or hire” the words “other than for car pooling” should be added, and
 - In Paragraph 8 (c)(i) on Page 9 of the policy, after the words “. . . the use by the insured of his automobile for the carriage of another person in return for the former's carriage in the automobile of the latter” the words “referred to in the application as ‘car pooling’” should be added.
11. Items 5 and 6 of the application involve some questions that relate to the absolute unwillingness of the insurer to accept the risk, whereas other questions may relate merely to the calculation of the premium amount. These two classes of question should be separated and each class should be clearly labelled so as to indicate their purpose. In this way the insured will be more adequately warned as to the real consequences of misrepresentation.
12. Item 7 requires particulars of all accidents, losses or claims arising out of the ownership, use or application of any automobile by the applicant or spouse within three years preceding the application. It would seem almost self-evident that the applicant should not be prejudiced in any way if he answers this question incorrectly but innocently. It is therefore desirable that there be added at the end of the question, the words “if known”.
13. Item 10 purports to warn the applicant as to the consequences of misrepresentation or breach of contract, and yet the language is obscure. This intended warning should be expressed in very clear, simple and unambiguous terms and Section 204 of The Insurance Act, from which the wording is taken, should be correspondingly amended.
14. Although the application seeks to warn the applicant of the consequences of breach on his part, it does not give any acknowledgement as to the responsibility of the insurer for breach of its obligations. One obligation which the insurer should agree on the face of the application to assume should be to designate the correct rate

classification for the applicant and to calculate his premium accordingly and in the applicant's best interest. An undertaking by the insurer to this effect should appear on the face of the application form.

15. The application does not contain any warning that a special and little-known exclusion relating to trailers exists in sub-paragraphs (e) and (f) of the third paragraph of Page 1 of the policy. These provisions are more fully discussed in Chapter 5. It is sufficient to emphasize here that there is a need for a clear warning as to the existence of this exclusion on the face of the application form.

SECTION A — THIRD PARTY LIABILITY

The Insurer agrees to indemnify the insured and, in the same manner and to the same extent as if named herein as the insured, every other person who with his consent personally drives the automobile, or personally operates any part thereof, against the liability imposed by law upon the insured or upon any such other person for loss or damage arising from the ownership, use or operation of the automobile and resulting from

BODILY INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO PROPERTY

The Insurer shall not be liable under this section,

- (a) For any liability imposed by any workmen's compensation law upon any person insured by this section; or
- (b) for loss or damage resulting from bodily injury to or the death of any person insured by this section; or
- (c) for loss or damage resulting from bodily injury to or the death of any employee of any person insured by this section while engaged in the operation or repair of the automobile; or
- (d) for loss of or damage to property carried in or upon the automobile or to any property owned or rented by, or in the care, custody or control of any person insured by this section; or
- (e) while the automobile is used for towing a trailer owned by the insured unless indemnity is also provided by the Insurer in respect of the trailer; or
- (f) while the trailer, if it is the insured vehicle, is towed by an automobile owned by the insured unless indemnity is also provided by the Insurer in respect of the automobile; or
- (g) for any amount in excess of the limit(s) stated in section A of item 4 of the application, and expenditures provided for in the Additional Agreements of this section; subject always to the provisions of the section of the Insurance Act (Automobile Insurance Part) relating to the nuclear energy hazard; or
- (h) for any liability arising from contamination of property carried in the automobile.

See also General Provisions, Definitions, Exclusions
and Statutory Conditions of this Policy

ADDITIONAL AGREEMENTS OF INSURER

Where indemnity is provided by this section the Insurer shall,

- (1) upon receipt of notice of loss or damage caused to persons or property, serve any person insured by this policy by such investigation thereof, or by such negotiations with the claimant, or by such settlement of any resulting claims, as may be deemed expedient by the Insurer; and
- (2) defend in the name and on behalf of any person insured by this policy and at the cost of the Insurer any civil action which may at any time be brought against such person on account of such loss or damage to persons or property; and
- (3) pay all costs taxed against any person insured by this policy in any civil action defended by the Insurer and any interest accruing after entry of judgment upon that part of the judgment which is within the limit(s) of the Insurer's liability; and
- (4) in case the injury be to a person, reimburse any person insured by this policy for outlay for such medical aid as may be immediately necessary at the time of such injury; and
- (5) be liable up to the minimum limit(s) prescribed for that province or territory of Canada in which the accident occurred, if that limit(s) is higher than the limit(s) stated in section A of item 4 of the application; and
- (6) not set up any defense to a claim that might not be set up if the policy were a motor vehicle liability policy issued in the province or territory of Canada in which the accident occurred.

AGREEMENTS OF INSURED

Where indemnity is provided by this section, every person insured by this policy

- (a) by the acceptance of this policy, constitutes and appoints the Insurer his irrevocable attorney to appear and defend in any province or territory of Canada in which action is brought against the insured arising out of the ownership, use or operation of the automobile;
- (b) shall reimburse the Insurer, upon demand, in the amount which the Insurer has paid by reason of the provisions of any statute relating to automobile insurance and which the Insurer would not otherwise be liable to pay under this policy.

CHAPTER 5

Policy Section A — Third Party Liability

The provisions of Section A — Third Party Liability provide in summary, for the indemnification of the insured against liability imposed by law upon the insured for loss or damage arising from the ownership, use or operation of the automobile and resulting from bodily injury to or the death of any person or damage to property. In short, this is the section that provides for compensation to be paid to third parties. A copy of section A is set out in full on the opposite page.

It should be added that the insurer undertakes to indemnify not only the insured but also every other person who with his consent personally drives the automobile.

Exclusions Applicable to Trailers

Section A contains certain exclusions, which the Committee has reviewed. The Committee is particularly concerned about exclusions (e) and (f), which provide that the insurer shall not be liable under Section A while the automobile is used for towing a trailer owned by the insured unless indemnity is also provided by the insurer in respect of the trailer; or while the trailer, if it is the insured vehicle, is towed by an automobile owned by the insured unless indemnity is also provided by the insurer in respect of the automobile. An “owned trailer” is defined in General Definition 5(f) of the policy as “a trailer owned by the insured, not described in the policy other than a trailer designed or used for passenger carrying, demonstration, sales, office or dwelling purposes.” A “non-owned trailer” is defined in General Definition 5(g) as a trailer not owned by the insured used in connection with the automobile. The effect of these provisions would appear to be that:

—The insurer *is* liable under Section A Third Party Liability while the automobile is used for towing:

- any rental trailer or other non-owned trailer;
- any owned trailers described in the policy;
- all other owned trailers, even if they are not described in the policy unless they are designed or used for passenger carrying, demonstration, sales, office or dwelling purposes;

—The insurer is *not* liable under Section A Third Party Liability while the automobile is used for towing an *owned* trailer not described in the policy if it is designed or used for passenger carrying, demonstration, sales, office or dwelling purposes.

The Committee has concluded that it is inappropriate to exempt insurers from their obligations with regard to third party liability in the circumstances set out above and so **the Committee accordingly recommends** that this entire exception be deleted from the policy.

Insurer's Obligation to Pay Interest

While the principal obligation of the insurer under Section A — Third Party Liability is the duty of indemnification that has been described above, there are certain other obligations, designated as “Additional Agreements of Insurer”, that are also set out.

Additional Agreement (3) obligates the insurer to pay any interest accruing after entry of judgment upon that part of the judgment which is within the limit(s) of the insurer's liability. In view of the fact that the policy may have effect in some jurisdiction where interest is payable by law from some date earlier than the entry of judgment, **the Committee recommends** that this provision be broadened. It should provide that the insurer shall pay *any* interest accruing which by law is payable as a result of the insured's liability to third parties arising from the ownership, use or operation of the automobile. Furthermore, in view of the Committee's recommendation in the following chapter that unlimited third party liability coverage should be mandatory, it will no longer be necessary to limit the interest payable by the insurer to “that part of the judgment which is within the limit(s) of the insurer's liability”.

Emergency Treatment Payments

Additional Agreement (4) provides that “in case the injury be to a person, the insurer shall reimburse any person insured by the policy for outlay for such medical aid as may be immediately necessary at the time of such injury”. The Committee considers that this provision has been inserted into the policy for the purpose of providing compensation for emergency treatment and that the insurer's obligation of reimbursement is quite irrespective of the question of fault involved in the accident which necessitated the treatment. The Committee believes that it would only be consistent with the intention upon which the provision is based that the reimbursement be made *immediately*, and accordingly, **the Committee recommends** that the provision be amended to provide that the insurer will *immediately* reimburse any person insured by the policy for such outlays.

Additional Agreement (5)

Additional Agreement (5) provides that the insurer shall be liable up to the minimum limits prescribed for that province or territory of Canada in which the accident occurred if those minimum limits are higher than the agreed limits of the insured's own policy. In view of the Committee's recommendation in Chapter 6 that unlimited third party liability coverage be made mandatory, the Committee also recommends that Additional Agreement (5) should be deleted because it will be redundant.

CHAPTER 6

Unlimited Third Party Liability Coverage

For many years the consensus in Ontario, as in other provinces, has been that the community has an interest in fixing the minimum limits of the insurer's liability for which a policy may be issued. The reason for this concern is the importance of making sure that insurance policies will give some substantial degree of protection to other persons who might suffer loss as a result of the operation of the insured automobile. In order to afford this substantial protection, drivers who purchase third party liability coverage have been required by law to buy at least a minimum limit, the exact amount of which has varied over the years, so as to provide substantial protection to others.

The first minimum limit was set by the Insurance Amendment Act 1932 and the minimum limits have been increased from time to time since then. The following is the history of the Ontario legislation that has created the trend in the direction of constantly increasing minimum limits:

- Prior to 1932 there was no minimum limit.
- The Insurance Amendment Act, 1932 required that every policy in case of bodily injury or death have a minimum limit of at least \$5,000 (exclusive of interest or costs) against loss or damage resulting from bodily injury to or death of any one person and subject only to such limit, for any one person so injured or killed, of at least \$10,000 (exclusive of interest and costs) against loss or damage resulting from bodily injury to or death of two or more persons in any one accident or, in the case of property damage, to the limit of at least \$1,000 (exclusive of interest and costs) for damage to property resulting from any one accident.
- After 15 years, The Insurance Amendment Act, 1957 increased the foregoing minimum limits to \$10,000 for each person, \$20,000 for each accident and \$5,000 for property damage.
- Ten years later, The Insurance Amendment Act, 1966 further increased the minimum limits by providing that every contract insure in respect of any one accident to the limit of at least \$35,000 (exclusive of interest and costs) against liability resulting from bodily injury to or the death of one or more persons and loss of or damage to property.
- Three years later The Insurance Amendment Act, 1968-69, Section 11, increased the foregoing minimum limit to \$50,000.
- After seven years, The Insurance Amendment Act, 1976 which is the most recent Ontario enactment on the topic, further increased the foregoing minimum limit to \$100,000 effective January 1, 1977.

Obviously the trend in minimum limits under Ontario law is continuously upward. This trend can be explained in part by the general inflationary trend that has been inevitably increasing monetary standards in our economy. In addition, it reflects a growing acceptance of the concept that universal automobile insurance coverage is a desirable goal and that everyone ought to be not only protected by insurance but protected by adequate insurance.

It has been argued that minimum limits should not be increased because to do so is to encourage increasing public expectations. This argument is rejected by the Committee. One may debate about whether expectations of compensation are too high in our society. If it were concluded that they were, it would be appropriate to face up to the problem frontally, and to take remedial action. Such action might take the form of a scheme of legislative limits on general damage awards, or even the outright abolition of general damages for non-economic losses. Whatever the solution, the first step must be to recognize that the question of the reasonableness of prevailing levels of compensation is a separate problem and that it should be dealt with as such. It is certainly unfortunate and often tragic when damage awards which are fair and just by every reasonable test turn out to be unrecoverable merely because our fear of large awards has discouraged us from establishing a no-limit form of coverage.

It is interesting to observe that in the United Kingdom and in Switzerland, Sweden, France and other European countries, no-limit policies have been mandatory for many years. When the Committee during its overseas hearings questioned experienced representatives of industry, government and the universities, they were interested to observe that the universal reaction was that no-limit coverage had simply not presented any problems.

Committee members had conjectured that no-limit coverage might create problems in accounting and in reinsuring that might be serious for insurance companies. They therefore questioned industry representatives in England and Switzerland carefully in this regard. The consensus that developed from these discussions was that no-limit coverage simply did not pose any real problems for the industry, and indeed some representatives indicated some surprise that the Committee had supposed that any real difficulties would be involved.

The Committee is convinced that the insurance industry, with its immense statistical experience and its adaptability is quite capable of providing unlimited third party liability coverage. The ratemaking, accounting and reinsurance systems that are customarily followed where there are policy limits can continue to be followed subject to minor adjustments. It is interesting to note the comments that have been made

recently by Mr. A.A. Horsford, President of the Royal Insurance Company of Canada with regard to the need for a fundamental increase in premium limits:

“We should advocate much higher minimum limits of financial responsibility for the compulsory bodily injury protection: I would regard \$1 million as a minimum — and I would not quarrel with more. I know all the familiar arguments about the consequences of such a change, but I believe a quick move to such high limits would moderate some of the consequences usually associated with increased limits, whilst, more importantly, we should go a long way to ensure that all victims of automobile accidents will be adequately compensated. Moreover, current underwriting conditions are such that a move to high limits could be accomplished within a more reasonable pricing framework than would have been the case in the last two years.”¹

During the past five years an increasing number of policyholders have been voluntarily purchasing coverage in higher limits than the statutory minimum and in fact, in 1975 only about *ten per cent* of all policyholders carried only the minimum limits. The following table shows this trend:

Limits	1971	1973	1975
\$50,000 inclusive	16.9%	14.4%	10.3%
\$100,000 inclusive	46.7	47.2	45.4
\$200,000 inclusive	11.3	11.9	13.3
over \$200,000	25.1	26.5	31.0
	100.0%	100.0%	100.0%

During the past three-year period claims in excess of \$50,000 have occurred somewhat infrequently and represent a minor proportion of the total *number* of losses. However, they appear to constitute a significant proportion of the total *amount* of losses. Thus losses in excess of \$100,000 numbered 64 in 1973, 77 in 1974 and 100 in 1975. The total amount of all losses over \$100,000 was \$9,110,000 in 1973, increasing to \$12,766,000 in 1974 and increasing further to \$16,044,000 in 1975.

It is apparent from the foregoing that cases of large losses from a single accident do indeed, occur. For the people suffering such losses, the need to be taken care of by a fully effective loss distribution system is urgent in the extreme.

1. “Yesterday’s Problems — Tomorrow’s Challenges: A Fresh Approach to Auto Insurance”, a speech by Alan A. Horsford to the Insurance Institute of Ontario, March 9, 1977.

The Committee is satisfied that the increase from the present minimum limit of \$100,000 to unlimited coverage can be accomplished without a substantial policy increase, particularly in view of the fact that all policyholders will be contributing to such minor increase as may be warranted.

After careful consideration, **the Committee recommends** that the Act be amended so as to provide that it be mandatory for third party liability coverage to be in an unlimited amount.

SECTION B — ACCIDENT BENEFITS

The Insurer agrees to pay to or with respect to each insured person as defined in this section who sustains bodily injury or death by an accident arising out of the use or operation of an automobile.

SUBSECTION 1 — MEDICAL AND REHABILITATION BENEFITS

- (1) All reasonable expenses incurred within four years from the date of the accident as a result of such injury for necessary medical, surgical, dental, hospital, professional nursing, and ambulance service and, in addition, for such other services and supplies which are, in the opinion of the insured person's attending physician and that of the Insurer's medical advisor, essential for the treatment or rehabilitation of said person, to the limit of \$5,000.00 per person.
- (2) Funeral services up to the amount of \$500.00 in respect to the death of any one person.

The Insurer shall not be liable under this subsection for those portions of such expenses payable or recoverable under any medical, surgical, dental, or hospitalization plan or law or, except for similar insurance provided under another automobile insurance contract, under any other insurance contract or certificate issued to or for the benefit of, any insured person.

SUBSECTION 2 — DEATH AND TOTAL DISABILITY

Part I. Death Benefits

A. Subject to the provisions of this Part I, for death which ensues within 180 days of the accident or within 104 weeks of the accident if there has been continuous total disability during that period, a payment—based on the age and status at the date of the accident of the deceased in a household where spouse or dependants survive—of the following amount:

Age of Deceased at Date of Accident	Head of Household	Status of Deceased	
		Spouse in Two-parent Households	Dependent Children
Under 5 years	—	—	\$ 500.
5 years but under 10 years	—	—	1,000.
10 years but under 21 years	\$5,000.	\$2,500.	1,000.
21 years and over	5,000.	2,500.	—

In addition, with respect to death of head of household, where there are two or more survivors—spouse or dependants—the principal sum payable is increased \$1,000. for each survivor other than the first.

B. FOR THE PURPOSES OF THIS PART I,

- (1) the spouse of head of household shall be deemed to be the spouse with the lesser income in the year preceding the date of death;
- (2) a deceased person whose only surviving dependants are his parents or the parents of his spouse shall be deemed a head of household if such parents, at the date of the accident, were residing in the same dwelling premises as the deceased person and were principally dependent upon him for financial support;
- (3) the words "dependent child" as used herein shall mean a child,
 - (a) under the age of 21 years and who resides with and is wholly dependent upon the head of the household for financial support; or
 - (b) 21 years of age or over who, because of mental or physical infirmity, is wholly dependent upon the head of household for financial support;
- (4) the total amount payable shall be paid with respect to death of head of household or spouse to the surviving spouse. If there is no surviving spouse in the household, no amount shall be payable unless there are surviving dependent children or dependent parents, as defined in (2) and (3) above, and in that event the total sum payable shall be divided equally among the surviving dependants in the household;
- (5) the total amount payable with respect to death due to a common disaster of head of household and spouse shall be divided equally between surviving dependent children or dependent parents;

- (6) the amount payable with respect to the death of a dependent child shall be divided equally between the surviving parents; if no parent survives no amount shall be payable;
- (7) amounts payable under this Part I shall be paid only to a person who is alive 30 days after the death of the insured person.

PART II. TOTAL DISABILITY

A weekly benefit for the period during which the injury shall wholly and continuously disable such insured person; provided,

- (a) such person was employed at the date of the accident;
- (b) within 20 days from the date of the accident such injury prevents him from performing any and every duty pertaining to his occupation or employment;
- (c) no benefit shall be payable for any period in excess of 104 weeks except that if, at the end of the 104 week period, it has been established that such injury permanently and totally disabled such person from engaging in any occupation or employment for which he is reasonably suited by education, training or experience, the Insurer agrees to pay such weekly benefit for the duration of such disability;
- (d) any such weekly benefit will be reduced by the amount of the Old Age Pension and any retirement pension under the Canada Pensions Plan, as established when the insured person first became eligible therefor.

Amount of Weekly Benefit — The weekly benefit payable shall be at the rate of 80 per cent of the gross weekly earnings, subject to a maximum of \$70 per week.

The above benefits shall be subject to the terms of clause (3) below.

For the purposes of this Part II.

- (1) a principal unpaid housekeeper residing in the household and not otherwise engaged in occupation or employment for wages or profit, if injured, shall be deemed disabled only if completely incapacitated and unable to perform any of his or her household duties and, while so incapacitated, shall receive a benefit at the rate of \$35 per week for not more than 12 weeks;
- (2) a person shall be deemed to be employed,
 - (a) if actively engaged in occupation or employment for wages or profit at the date of the accident; or
 - (b) if 21 years of age or over and under the age of 65 years, so engaged for any six months out of the preceding 12 months;
- (3) except for the first two weeks of disability where the benefits for loss of time payable hereunder, together with benefits for loss of time under another contract, including a contract of group accident insurance and a life insurance contract providing disability insurance, exceed the money value of the time of the insured person, the Insurer is liable only for that proportion of the benefits for loss of time stated in this policy that the money value of the time of the person insured bears to the aggregate of the benefits for loss of time payable under all such contracts.

SUBSECTION 3 — UNINSURED MOTORIST COVER

All sums which every insured person shall be legally entitled to recover as damages for bodily injury, and all sums which any other person shall be legally entitled to recover as damages because of the death of any insured person, from the owner or driver of an uninsured or unidentified automobile as defined herein.

- (1) **The Insurer shall not be liable under this subsection,**
 - (a) in respect of any accident which occurs in any province of Canada;
 - (b) to any person who has a right of recovery under an unsatisfied judgment or similar fund in effect in any jurisdiction of the United States of America;
 - (c) to any person who, without the written consent of the Insurer, makes directly or through his representative any settlement with or prosecutes to judgment any action against any person or organization which may be legally liable therefor;
 - (d) for any amount in excess of the minimum limit(s) for automobile bodily injury liability insurance applicable in the jurisdiction in which the accident occurs regardless of the number of persons so injured or killed, but in no event shall such limit(s) exceed the minimum limit(s) applicable in the jurisdiction stated in item 1 of the application.

(2) Uninsured automobile defined

An "uninsured automobile" under this section means an automobile with respect to which neither the owner nor driver thereof has applicable and collectible bodily injury liability insurance for its ownership, use or operation, but shall not include an automobile owned by or registered in the name of

- (a) the named insured or by any person residing in the same dwelling premises therewith; or
- (b) the governments of Canada or the United States of America or any political sub-division thereof or any agency or corporation owned or controlled by any of them; or
- (c) any person who is an authorized self-insurer within the meaning of a financial or safety responsibility law; or
- (d) any person who has filed a bond or otherwise given proof of financial responsibility with respect to his liability for the ownership, use or operation of automobiles.

(3) Unidentified automobile defined

An "unidentified" automobile under this subsection means an automobile which causes bodily injury or death to an insured person arising out of physical contact of such automobile with the automobile of which the insured person is an occupant at the time of the accident, provided

- (a) the identity of either the owner or driver of such automobile cannot be ascertained, and
- (b) the insured person or someone on his behalf has reported the accident within 24 hours to a police, peace or judicial officer or to an administrator of motor vehicle laws and shall have filed with the Insurer within 30 days thereafter a statement under oath that the insured person or his legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity cannot be ascertained and setting forth the facts in support thereof; and
- (c) at the request of the Insurer, the insured person or his legal representative makes available for inspection the automobile of which the insured person was an occupant at the time of the accident.

(4) Limitation of liability

- (a) If claim is made under this subsection and claim is also made against any person who is an insured under section A — Third Party Liability of this policy, any payment under this subsection shall be applied in reduction of any amount which the insured person may be entitled to recover from any person who is insured under section A;
- (b) Any payment made under section A or under subsections 1 or 2 of section B of this policy to an insured person hereunder shall be applied in reduction of any amount which such person may be entitled to recover under this subsection.

(5) Determination of legal liability and amount of damages

The determination as to whether the insured person shall be legally entitled to recover damages and if so entitled, the amount thereof, shall be made by agreement between the insured person and the Insurer.

If any difference arises between the insured person and the Insurer as to whether the insured person is legally entitled to recover damages, and, if so entitled, as to the amount thereof these questions shall be submitted to arbitration of some person to be chosen by both parties, or if they cannot agree on one person, then by two persons, one to be chosen by the insured person and the other by the Insurer, and a third person to be appointed by the persons so chosen. The submission shall be subject to the provisions of the The Arbitration Act and the award shall be binding upon the parties.

(6) Notice of legal action

If, before the Insurer makes payment of loss hereunder, the insured person or his representative shall institute any legal action for bodily injury or death against any other person owning or operating an automobile involved in the accident, a copy of the writ of summons or other process served in connection with such legal action shall be forwarded immediately to the Insurer.

**SPECIAL PROVISIONS, DEFINITIONS AND
EXCLUSIONS OF SECTION B**

(1) "INSURED PERSON" DEFINED

In this section, the words "insured person" mean,

- (a) any person while an occupant of the described automobile or of a newly acquired or temporary substitute automobile as defined in this policy;
- (b) the insured and, if residing in the same dwelling premises as the insured, his or her spouse and any dependent relative of either while an occupant of any other automobile; provided that,
 - (i) the insured is an individual or are husband and wife;
 - (ii) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident;
 - (iii) such other automobile is not owned or regularly or frequently used by the insured or by any person or persons residing in the same dwelling premises as the insured;
 - (iv) such other automobile is not owned, hired, or leased by an employer of the insured or by an employer of any person or persons residing in the same dwelling premises as the insured;
 - (v) such other automobile is not used for carrying passengers for compensation or hire or for commercial delivery;
- (c) in subsections 1 and 2 of this section only, any person, not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck, in Canada, by the described automobile or a newly acquired or temporary substitute automobile as defined in the policy;
- (d) in subsections 1 and 2 of this section only, the named insured, if an individual and his or her spouse and any dependent relative residing in the same dwelling premises as the named insured, not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck by any other automobile; provided that,
 - (i) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident;
 - (ii) that automobile is not owned or regularly or frequently used by the insured or by any person or persons residing in the same dwelling premises as the named insured;
 - (iii) that automobile is not owned, hired, or leased by an employer of the insured or by an employer of any person or persons residing in the same dwelling premises as the named insured;
- (e) if the insured is a corporation, unincorporated association, or partnership, any employee or partner of the insured for whose regular use the described automobile is furnished, and his or her spouse and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while an occupant of any other automobile of the private passenger or station wagon type; and
- (f) in subsections 1 and 2 of this section only, any employee or partner of the insured, for whose regular use the described automobile is furnished, and his or her spouse and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck by any other automobile; provided that, in respect of (e) and (f) above,
 - (i) neither such employee nor partner or his or her spouse is the owner of an automobile of the private passenger or station wagon type;
 - (ii) the described automobile is of the private passenger or station wagon type;
 - (iii) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident;
 - (iv) such other automobile is not owned or regularly or frequently used by the employee or partner, or by any person or persons residing in the same dwelling premises as such employee or partner;
 - (v) such other automobile is not owned, hired, or leased by the insured or by an employer of any person or persons residing in the same dwelling premises as such employee or partner of the insured;
- in respect of (e) above only,
- (vi) such other automobile is not used for carrying passengers for compensation or hire or for commercial delivery.

(2) EXCLUSIONS

- (a) The insurer shall not be liable under this section for bodily injury to or death of any person,
 - (i) resulting from the suicide of such person or attempt thereat, whether sane or insane; or
 - (ii) who is entitled to receive the benefits of any workmen's compensation law or plan; or
 - (iii) caused directly or indirectly by radioactive material;

(b) The insurer shall not be liable under subsection 1 or Part II of subsection 2 of this section for bodily injury or death,

(i) sustained by any person who is convicted of drunken or impaired driving or of driving while under the influence of drugs at the time of the accident; or

(ii) sustained by any person driving the automobile who is not for the time being either authorized by law or qualified to drive the automobile.

(3) NOTICE AND PROOF OF CLAIM

The insured person or his agent, or the person otherwise entitled to make claim or his agent, shall,

(a) give written notice of claim to the Insurer by delivery thereof or by sending it by registered mail to the chief agency or head office of the Insurer in the Province, within 30 days from the date of the accident or as soon as practicable thereafter;

(b) within 90 days from the date of the accident for which the claim is made, or as soon as practicable thereafter, furnish to the Insurer such proof of claim as is reasonably possible in the circumstances of the happening of the accident and the loss occasioned thereby;

(c) if so required by the Insurer, furnish a certificate as to the cause and nature of the accident for which the claim is made and as to the duration of the disability caused thereby from a medical practitioner legally qualified to practise.

(4) MEDICAL REPORTS

The Insurer has the right and the claimant shall afford to the Insurer, an opportunity to examine the person of the insured person when and as often as it reasonably requires while the claim is pending, and also, in the case of the death of the insured person, to make an autopsy subject to the law relating to autopsies.

(5) "ATTENDING PHYSICIAN" DEFINED

"Attending physician" shall mean a person who legally engages in the practice of medicine or surgery, or both.

(6) RELEASE

Notwithstanding any release provided for under the relevant sections of **The Insurance Act** the Insurer may demand, as a condition precedent to payment of any amount under this section of the policy, a release in favour of the insured and the Insurer from liability to the extent of such payment from the insured person or his personal representative or any other person.

(7) WHEN MONEYS PAYABLE

(a) All amounts payable under this section, other than benefits under Part II of subsection 2, shall be paid by the Insurer within 30 days after it has received proof of claim. The initial benefits for loss of time under Part II of subsection 2 shall be paid within 30 days after it has received proof of claim, and payments shall be made thereafter within each 30-day period while the Insurer remains liable for payments if the insured person, whenever required to do so, furnishes prior to payment proof of continuing disability.

(b) No person shall bring an action to recover the amount of a claim under this section unless the requirements of provisions 3 and 4 are complied with, nor until the amount of the loss has been ascertained as provided in this section.

(c) Every action or proceeding against the Insurer for the recovery of a claim under this section shall be commenced within one year from the date on which the cause of action arose and not afterwards.

(8) LIMITATION ON BENEFIT PAYABLE

Where a person is entitled to benefits under more than one contract providing insurance of the type set forth in subsection 2, he or his personal representative or any person claiming through or under him by virtue of the Fatal Accidents Act, may recover only an amount equal to one benefit.

In so far as applicable the general provisions, definitions, exclusions and statutory conditions of the policy also apply.

CHAPTER 7

Policy Section B — Accident Benefits Coverage

Despite the general acceptance throughout our society of the principles of automobile insurance, there remain two major problems: first, as to the circumstances in which losses ought to be lifted from an injured person's shoulders, and second, as to the practical effectiveness of our loss distribution system. One of the questions that is implicit in the first major problem is whether the injured person's right to be compensated should be tied to questions of fault, or whether he should be compensated for his loss irrespective of any element of fault. This issue inevitably arises in the course of examining the coverage that is currently provided by policy Section B — Accident Benefits. It is therefore appropriate to review in the context of this chapter some of the arguments that have been advanced, both for and against no-fault insurance.

The No-Fault Debate

"No-Fault insurance" is a loose term that has been used to cover a broad variety of automobile insurance schemes that share one common characteristic. This is that the right of the claimant to recover compensation is not necessarily based on the existence of negligence on the part of the insured driver nor on the carefulness of the claimant. Apart from this common feature, there are many diverse elements in the various plans that have been proposed. The Committee has received material describing various systems of no-fault automobile insurance that have been suggested for various jurisdictions in North America. Even a brief examination of this material will show that a very wide spectrum of plans is classed under the broad, generic term "no-fault". A long and complex debate has proceeded and can be expected to continue over the advantages and disadvantages of the basic concept and over the various alternative proposals.

A brief description of the way in which the no-fault concept has developed and the opposing arguments about it may be helpful.

The law of tort, as it was developed by the courts of common law even before the automobile had made an impact upon our society, clearly provided that a party who was injured as a result of a road accident must establish that it was the result of the "fault" of another before he was entitled to compensation. "Fault" was taken to mean wilfulness or recklessness or mere negligence, but without fault there could be no cause of action.

The necessity of showing fault certainly had an appeal to nineteenth century society and its standards. The emphasis of the Victorians on propriety of conduct and their willingness to pass judgment on the conduct of their fellows created a fertile atmosphere for the full development of the legal concept that a person must bear full responsibility for his faults and conversely, that if a person has not been at fault, he ought not to pay the loss he has caused to another. Without needing to pass an opinion upon these values, we can nevertheless see clearly that they are fundamental to nineteenth century thought and that they were manifested in many walks of life, of which the law of the road was but one. It should be added that as a practical economic matter, a rule tying liability to fault in road accident cases was undoubtedly essential in an age that had no general system of road accident insurance. The alternative, a no-fault system, would simply have been unworkable without modern insurance facilities.

Although the common law tort rule of no-liability-without-fault persists into the present time, some of the attitudes of some members of modern society have changed substantially. For one thing, the willingness of earlier generations to pass judgment on their peers has ebbed and there is a hesitancy in our day to act as judges of the conduct of one's fellows. This change is even more apparent in such fields as the criminal law. Small wonder then, that concepts of motor accident liability irrespective of fault have recently found supporters in some jurisdictions.

Our society has experienced another change. In our day we have witnessed the development of a relatively efficient system of automobile insurance that can successfully be called upon to distribute losses across virtually the entire spectrum of the driving community. Proponents of no-fault therefore assert that the maturing of our system of insurance has changed fundamentally the economic consequences of adopting a no-fault system.

There has been another change, in addition to the changes in personal values and in the insurance system. There has been a vast change in the speed with which things happen. A road accident in the pre-motor age may have happened quickly enough, but in the age of the automobile, an accident happens far more quickly. The speed and complexity of modern driving conditions often make it a meaningless exercise to assess fault or blameworthiness among the participants in an accident. Driving is now an extremely complex operation that allows only the tiniest margin for error and so it has been argued that it simply does not make sense to make the right to compensation dependent upon some finding of fault. To illustrate the point, it has been estimated that the following occurrences arise in the course of driving a car:

Observations	200 per mile
Decisions	20 per mile

Errors	1 per 2 miles
Near Collisions	1 per 500 miles
Collisions	1 per 61,000 miles
Personal Injuries	1 per 430,000 miles
Fatal accidents	1 per 16,000,000 miles ¹

Whether this estimate has been scientifically calculated or is in reality apocryphal, daily experience confirms that it illustrates a valid principle. In such circumstances, it is argued, there is little merit in talking about fault when we may really mean “momentary imperfection”. The argument is therefore made that the right to compensation for losses that may be immense really should not turn on imperfections of conduct that are often trifling.

Those who propose the adoption of some no-fault system also contend that things now happen on the road with such speed that it is sometimes difficult to know just what really happened in an accident. The Honourable James C. McRuer, formerly the Chief Justice of the High Court in the Supreme Court of Ontario, who is one of the supporters of this position, testified before the Committee as follows:

“I can say without hesitation, and I’ve said it many times, that I never felt sure or had any degree of sureness that I was administering justice when I was trying an automobile case. Why is that? The law of negligence is that of what would a reasonable and prudent man do in a particular circumstance that brought about a split-second error in decision or misjudgment. You try to diagnose that in the courts. But how? By evidence given, say, by witnesses who are perfectly honest, trying to recollect something that they did not expect to happen at all. There was no occasion for making notes; it was just an observation, and they are asked to recollect this afterwards and some time afterwards. . . . The reasonable, prudent man has had volumes written about him. Learned judgments have been written about him, House of Lords judgments. . . . Who is he? What happens pretty much is that we say ‘I wouldn’t have done that. I don’t think it a wise thing.’ To the juryman it becomes pretty much of a guess.

“There’s a fanciful idea that negligence can be apportioned. Just look at that as a problem in sitting down to say how you can apportion degrees of negligence. You are asked to do it. The jury is asked to do it. The judge is asked to do it. 20-80 per cent; 70-30 per cent; 67.5-32.5 per cent; these are the sorts of things you get, and then you have the comic provision, ‘Well, if you can’t do it, it’s 50-50.’! If

1. *Norman, Road Traffic Accidents — Epidemiology, Control and Prevention* Page 51. (World Health Organization Public Health Papers No. 12, 1962) quoted in Keeton, R.E. and O’Connell, J.: *Basic Protection for the Traffic Victim*, Toronto 1965, at page 16.

you haven't got enough evidence one way or another to measure these two things, degrees of fault, then it goes 50-50. Is that justice? Can anybody say that it's justice?"²

Those who oppose no-fault systems point to the fact that the end result of the adoption of such a system is that it compensates a person for his own fault. There is something quite fundamentally offensive, opponents of the concept contend, about any scheme that assures a person that he need not bear the consequences of his own negligence on the road. As an example, they cite the case of the drunken driver who, as a result of his impairment, injures himself and others on the road. Under the no-fault principle, all would be compensated to the full extent of their losses.

Another argument in opposition to the no-fault system is that the adoption of such a concept would inevitably result in the loss of certain advantages in the present compensation system. Opponents of no-fault emphasize the importance of the injured person's right to have his damages determined by the relatively flexible processes of the traditional legal system and they assert that any change to a no-fault system will inevitably bring with it a change to a system of fixing damages by some relatively arbitrary form of tariff. They also stress the importance of the injured person's traditional right to be compensated for such non-economic damages as pain and suffering and they state that the adoption of a no-fault system will inevitably be coupled with the abolition of this right. It should be explained that the point that the opponents of no-fault are making is not that there is an inevitably logical tie between no-fault coverage on the one hand and the abolition of these features of the present compensation system on the other. Rather they are pointing out that in practice, suggestions for the adoption of no-fault are in fact almost invariably accompanied by suggestions for the abolition of the other two traditional rights.

As has been stated, a long and complicated debate has proceeded and will continue over the merits of this issue. **The Committee has decided** not to make any major recommendations at this state in its proceedings as to the desirability of adopting any fundamentally new no-fault programme in this province. Instead, it proposes to reserve the making of any such recommendations until after the tabling of this Report. It believes, however, that the Accident Benefits coverage currently provided in the standard automobile policy can be substantially improved in the detailed ways that are described later in this chapter, particularly by increasing benefits in keeping with recent inflationary trends.

2. *Transcript of the Proceedings of the Select Committee on Company Law*, September 2, 1976, page CL10: 50-1. See also McRuer, J.C.: *The Motor Car and the Law*, Toronto, 1965.

Evolution of Accident Benefits Coverage

In 1960 the Legislative Assembly's Select Committee on Automobile Insurance received representations on a proposed no-fault system from the All-Canada Insurance Association and from a committee of benchers of the Law Society of Upper Canada. In 1961 that Select Committee tabled an Interim Report recommending the adoption of a partial no-fault element in Ontario automobile insurance coverage,—one of the first of its kind in North America. In 1969 the Insurance Act was amended in order to permit accident insurance to be written as a part of automobile insurance and also to adopt the recommendation that had been made by the Select Committee. The amendment provided that it would be optional to the policyholder as to whether he would select this coverage or not. This amendment included the addition of Schedule E to the Act, setting out the full text of the Accident Benefits Section. In 1972 Section B — Accident Benefits Coverage was enriched and became mandatory in all automobile insurance policies issued in Ontario that contained third party liability coverage. This no-fault element in the Ontario policy is designated as "Section B — Accident Benefits Coverage."

The Present Accident Benefits Coverage

It is vital to an understanding of the policy to keep in mind that, although the Section B — Accident Benefits Coverage appears in form to be a part of the standard automobile policy, it is in substance and for all practical purposes a separate policy that has been inserted into the more traditional automobile policy. It should therefore be read as though it were an independent document standing apart from the rest of the policy. Indeed, in Schedule E of the Act it is set out as though it were an entirely separate policy standing on its own.

Those who are covered by the Accident Benefits Coverage include, in general—

- (a) any person while an occupant of the described automobile;
- (b) the insured and, if residing together, the insured's spouse and any dependent relative while an occupant of any other automobile;
- (c) any pedestrian who is struck by the designated automobile;
- (d) the insured and, if residing together, the insured's spouse and any dependent relative who is struck while he or she is a pedestrian;
- (e) employees or partners of insured organizations for whose regular use an automobile is furnished and such person's spouse and any dependent relative while an occupant of any other automobile or while a pedestrian.

The foregoing has been simplified for explanatory purposes, to illustrate the broad scope of those who are protected by this coverage. The exact wording is set out in the third column of the text of Section B which precedes the first page of this chapter.

The benefits payable under this coverage include three broad categories:

1. Medical and rehabilitation benefits:
 - (1) certain expenses for medical, surgical, dental, hospital, professional nursing and ambulance services and for rehabilitation; and
 - (2) funeral expenses.
2. Death and total disability benefits.
3. Uninsured motorist cover: all sums which an insured person is legally entitled to recover as damages as a result of the injury and all sums that any other person is entitled to recover as the result of the death of an "insured person" from the owner or driver of certain uninsured or unidentified automobiles.

The Accident Benefits Coverage has the appearance of a major benefit to a broad segment of those who suffer personally from motor accidents. It is important to emphasize, however, that the coverage is closely limited in its operation, so as to provide benefits where virtually no other source of benefit exists. For example:

- (a) Medical and rehabilitation benefits are not available if they can be obtained from any other sickness or accident insurance plan, such as the Ontario Hospital Insurance Plan or from the Workmen's Compensation Board.
- (b) Death benefits are payable only if the beneficiary survives for 30 days after the insured person's death.
- (c) disability payments are reduced by the amount of the Old Age Pension and any retirement pension under the Canada Pension Plan.
- (d) Uninsured Motorist coverage applies only to damages that are recoverable as a result of accidents occurring in those American States where there is no recourse available to an unsatisfied judgment fund, and even then, the amount recoverable is not more than the minimum limit in force in that jurisdiction.
- (e) Payments made under the Accident Benefits Coverage must be credited in reduction of any amount payable under the third party liability coverage in the policy.

It is clear from the foregoing that the philosophy underlying the accident benefits coverage is that it is intended primarily to fill in many

gaps in other insurance systems or insurance-oriented systems for the protection of the public. It must be stressed that Accident Benefits Coverage was originally established to ensure that injured persons got some basic compensation regardless of fault and that they got it quickly. As such, it undoubtedly fills a real need, but it is important to recognize that the benefits actually paid out in practice are not large. This is indicated clearly by the fact that the premium for this coverage is currently only about \$14.00.

The Committee is convinced that Accident Benefits Coverage has been in principle a worthwhile addition to the automobile insurance system of the province. The Committee recommends, however, that a number of changes be made in the details of that coverage, especially in the amounts of benefits.

The following are the Committee's recommendations with regard to the changes that ought to be made:

1. As has been indicated, the coverage provides for payment of benefits to cover all reasonable expenses incurred within four years from the date of the accident for necessary medical, surgical, dental, hospital, professional nursing and ambulance services and, in addition, for such other services as are essential for the treatment or rehabilitation of insured persons to the limit of \$5,000.00 per person. The Committee recommends that the limit of \$5,000 per person should be increased to \$25,000.00 per person. In addition it should be made quite clear that this item includes payments for medical rehabilitation and also for occupational retraining that have been made necessary by the accident. The Committee also wishes to observe that there is a substantial need within the Province of Ontario for adequate rehabilitation and retraining programmes and facilities for the assistance of those who are injured in automobile accidents.
2. Payment for funeral expenses, as provided for in Sub-section 1 (2) should be increased from a maximum of \$500 in respect of the death of any one person to \$1,000 in respect of the death of any one person.
3. Death benefits provided by Sub-section 2, Part II A, should be revised and increased. No distinction should be made in the amount of death benefits on the basis of whether the deceased was a "head of household" or a "spouse in a two-parent household". Instead, the benefit in the event of the death of a spouse should be the same as that payable upon the death of the "head of the household". This benefit should be increased to \$10,000. In other cases the death

benefit should be \$2,000 where the deceased was five years of age or over and \$1,000 if under five years of age.

4. Total disability benefits as provided for in Sub-section 2, Part II, should be doubled so that the current maximum of \$70 per week, where applicable, should become \$140 per week and the current rate of \$35 per week should become \$70 per week.
5. The words “dependent children” are defined in Sub-section 2, Part I B (3), to include a child 18 years of age or over who, because of mental or physical infirmity, is wholly dependent upon the head of household for financial support. In view of the current trend towards increased educational periods, this definition should be broadened to include children of any age who are dependent upon the head of household for support because they are attending a school, college or university.
6. The provisions of Sub-section 1 (1) provide for payment of all reasonable expenses which are “in the opinion of the insured person’s *attending physician* and that of the insurer’s medical advisor essential for the treatment or rehabilitation of the said person”. Representations have been made to the Committee to the effect that the term “attending physician” excludes some practitioners to whom some people turn for help with injuries because of religious conviction or other beliefs. The Committee has considered these representations carefully and has concluded that the provision that has been quoted should be amended out of deference to the convictions of such persons. The clause should be altered so as to refer to the opinion of a “physician of the insured person’s choice” rather than the opinion of “the insured person’s attending physician”. The Committee considers that this amendment will enable a person to retain a physician of his choice to give the necessary opinion without requiring that person to be actually treated by a physician contrary to his or her religious convictions or beliefs. On the other hand, such persons would be quite free to be attended by practitioners of their choice for the purposes of treatment or rehabilitation.
7. Total disability payments, as provided by sub-section 2, Part II, are provided on a weekly basis for the period during which the injury *wholly and continuously* disables the insured person. The Committee has found that the italicized words were added in order to prevent the improper application of this provision to persons who might be malingerers. However, in practice, the use of these words has worked against honest people who have tried to go back to work only to find that they are unable to stay on the job.

A provision should therefore be added that a person shall not be disentitled to benefits merely because he or she has tried unsuccessfully to resume employment.³

8. An “insured person” is defined in paragraph (1) of the Special Provisions, Definitions and Exclusions of Section B to include the spouse of the designated insured. The Committee considers that this definition of “insured person” should be broadened so that it recognizes the relationship of “common-law spouses” in a way that is similar to the recognition that has been granted in the proposed Family Law Reform Act that is currently before the Legislature and in the Succession Duty Act.
9. In paragraph (5) of the Special Provisions, Definitions, and Exclusions of Section B the words “attending physician” are defined to mean a person who legally engages in the practice of medicine or surgery, or both. In view of the Committee’s recommendation number 6 above, the Committee does not consider it necessary or desirable that there be any extension of this definition.

3. It is interesting to compare the way in which this problem has been approached in the drafting of similar provisions in the Canada Pensions Act. It provides that, a person shall be considered disabled only if he is determined to be suffering from a *severe* and *prolonged* mental or physical disability. “Severe” means that the person must be incapable regularly of pursuing any substantially gainful occupation by reason of a mental or physical disability. “Prolonged” means that the incapacity to work at any substantially gainful occupation will be long continued and of indefinite duration or is likely to result in death. See the *Canada Pensions Act* RSO 1970, Ch.C-5, section 43(2).

SECTION C — LOSS OF OR DAMAGE TO INSURED AUTOMOBILE

The Insurer agrees to indemnify the insured against direct and accidental loss of or damage to the automobile, including its equipment

Subsection 1 — ALL PERILS — from all perils;

Subsection 2 — COLLISION OR UPSET — caused by collision with another object or by upset;

Subsection 3 — COMPREHENSIVE — from any peril other than by collision with another object or by upset;

The words "another object" as used in this subsection 3 shall be deemed to include (a) a vehicle to which the automobile is attached and (b) the surface of the ground and any object therein or thereon. Loss or damage caused by missiles, falling or flying objects, fire, theft, explosion, earthquake, windstorm, hail, rising water, malicious mischief, riot or civil commotion shall be deemed loss or damage caused by perils for which insurance is provided under this subsection 3.

Subsection 4 — SPECIFIED PERILS — caused by fire, lightning, theft or attempt thereof, windstorm, earthquake, hail, explosion, riot or civil commotion, falling or forced landing of aircraft or of parts thereof, rising water, or the stranding, sinking, burning, derailment or collision of any conveyance in or upon which the automobile is being transported on land or water;

DEDUCTIBLE CLAUSE

Each occurrence causing loss or damage covered under any subsection of section C except loss or damage caused by fire or lightning or theft of the entire automobile covered by such subsection, shall give rise to a separate claim in respect of which the Insurer's liability shall be limited to the amount of loss or damage in excess of the amount deductible, if any, stated in the applicable subsection of section C of item 4 of the application.

EXCLUSIONS

The Insurer shall not be liable,

(1) under any subsection of section C for loss or damage

- (a) to tires or consisting of or caused by mechanical fracture or breakdown of any part of the automobile or by rusting, corrosion, wear and tear, freezing, or explosion within the combustion chamber, unless the loss or damage is coincident with other loss or damage covered by such subsection or is caused by fire, theft or malicious mischief covered by such subsection; or
- (b) caused by the conversion, embezzlement, theft or secretion by any person in lawful possession of the automobile under a mortgage, conditional sale, lease or other similar written agreement; or
- (c) caused by the voluntary parting with title or ownership, whether or not induced to do so by any fraudulent scheme, trick, device or false pretense; or
- (d) caused directly or indirectly by contamination by radioactive material; or
- (e) to radios designed both for transmitting and receiving or their equipment; or
- (f) to contents of trailers or to rugs or robes; or
- (g) to tapes and equipment for use with a tape player or recorder when such tapes or equipment are detached therefrom; or
- (h) where the insured drives or operates the automobile
 - (i) while under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the automobile; or
 - (ii) while in a condition for which he is convicted of an offence under section 234 or section 236 of the Criminal Code (Canada) or under or in connection with circumstances for which he is convicted of an offence under section 235(2) of the Criminal Code (Canada); or
- (i) where the insured permits, suffers, allows or connives at the use of the automobile by any person contrary to the provisions of (h).

- (2) under subsections 3 (Comprehensive), 4 (Specified Perils) only, for loss or damage caused by theft by any person or persons residing in the same dwelling premises as the insured, or by any employee of the insured engaged in the operation, maintenance or repair of the automobile whether the theft occurs during the hours of such service or employment or not.

See also General Provisions, Definitions, Exclusions
and Statutory Conditions of this policy

ADDITIONAL AGREEMENTS OF INSURER

- (1) Where loss or damage arises from a peril for which a premium is specified under a subsection of this section, the Insurer further agrees:
- (a) to pay general average, salvage and fire department charges and customs duties of Canada or of the United States of America for which the Insured is legally liable;
 - (b) to waive subrogation against every person who, with the insured's consent, has care, custody or control of the automobile, provided always that this waiver shall not apply to any person (1) having such care, custody or control in the course of the business of selling, repairing, maintaining, servicing, storing or parking automobiles, or (2) who has committed a breach of any condition of this policy;
 - (c) to indemnify the insured and any other person who personally drives a temporary substitute automobile as defined in the General Provisions of this policy against the liability imposed by law or assumed by the insured or such other person under any contract or agreement for direct and accidental physical loss or damage to such automobile and arising from the care, custody and control thereof; provided always that:
 - (i) such indemnity is subject to the deductible clause and exclusions of each such subsection;
 - (ii) if the owner of such automobile has or places insurance against any peril insured by this section, the indemnity provided herein shall be limited to the sum by which the deductible amount, if any, of such other insurance exceeds the deductible amount stated in the applicable subsection of this policy;
 - (iii) the Additional Agreements under section A of this policy shall, insofar, as they are applicable, extend to the indemnity provided herein.
- (2) Loss of Use by Theft—Where indemnity is provided under subsections 1, 3 or 4 of section C hereof the Insurer further agrees, following a theft of the entire automobile covered thereby, to reimburse the insured for expense not exceeding \$8.00 for any one day nor totalling more than \$240.00 incurred for the rental of a substitute automobile including taxicabs and public means of transportation.
- Reimbursement is limited to such expense incurred during the period commencing seventy-two hours after such theft has been reported to the Insurer or the police and terminating, regardless of the expiration of the policy period, (a) upon the date of the completion of repairs to or the replacement of the property lost or damaged, or (b) upon such earlier date as the Insurer makes or tenders settlement for the loss or damage caused by such theft.

AGREEMENT OF INSURED

The insured, if engaged in the business of selling, repairing or servicing automobiles, agrees in the event of loss or damage for which indemnity is provided by any subsection(s) of section C of this policy to replace the property or make the necessary repairs at the actual cost to the insured if so requested by the Insurer.

CHAPTER 8

Policy Section C — Loss of or Damage to The Insured Automobile

Coverage for loss of or damage to the insured automobile is provided for in Section C of the Standard Automobile Policy. The text of this section is set out verbatim on the two preceding pages.

A standard automobile policy usually includes third party liability coverage and if it does, it must also include Accident Benefits Coverage. However there is no requirement that such a policy include any coverage for loss of or damage to the insured automobile. It is therefore left to the insured to decide whether he wishes to apply for the latter type of coverage and, if he so decides, the extent of the coverage that he wishes.

Section C of the standard automobile policy provides four different sub-classes of coverage for loss of or damage to the insured automobile from which the insured can make his selection:

- Subsection 1 All Perils — The insurer agrees to indemnify the insured against direct and accidental loss of or damage to the automobile, including its equipment, from all perils.
- Subsection 2 Collision or Upset — The insurer's obligation is limited to loss or damage caused by collision with another object or by upset.
- Subsection 3 Comprehensive — The insurer's obligation is limited to damage from *any* peril other than by collision with another object or by upset. The clause goes on to state that the following are deemed to be perils covered by this subsection: loss or damage caused by missiles, falling or flying objects, fire, theft, explosion, earthquakes, windstorm, hail, rising water, malicious mischief, riot or civil commotion.
- Subsection 4 Specified Perils — The insurer's obligation is limited to damage caused by fire, lightning, theft or attempt thereof, windstorm, earthquake, hail, explosion, riot or civil commotion, falling or forced landing of aircraft or of parts thereof, rising water, or the stranding, sinking, burning, derailment or collision of any conveyance in or upon which the automobile is being transported on land or water.

Collision and Comprehensive

The Committee has reviewed the various forms of protection provided by these alternate sub-classes of coverage and has concluded that in

certain respects there is confusion as to the perils that the sub-classes are intended to cover. The Committee has found as follows:

1. Subsection 1, "All perils" is clear and unambiguous.
2. Subsection 2, "Collision or upset" is equally clear.
3. Subsection 3, "Comprehensive", and Subsection 4, "Specified perils", contain certain ambiguities and deficiencies that should be rectified. Subsection 3 begins by stating that it covers "*any peril*" other than collision or upset. It then proceeds to say that loss or damage caused by certain specified perils, which are listed, shall be deemed loss or damage caused by perils for which insurance is provided under this subsection. It is not at all clear whether the term "any peril other than collision or upset" means exactly that or whether "any peril" really refers to those in the ensuing list. To make matters still more confusing, the specified perils which are listed are not identical with those listed under Subsection 4, "Specified perils". For example, damages from forced landing of aircraft or parts thereof, lightning, attempt at theft or the stranding, sinking, burning, derailment or collision of any conveyance in or upon which the automobile is being carried on land or on water are covered as specified perils in Subsection 4 but they are not among the listed perils in Subsection 3. On the other hand, damages from missiles, flying or falling objects other than aircraft or parts thereof and malicious mischief are specifically listed in Subsection 3, but they are not included among the specified perils covered by Subsection 4.

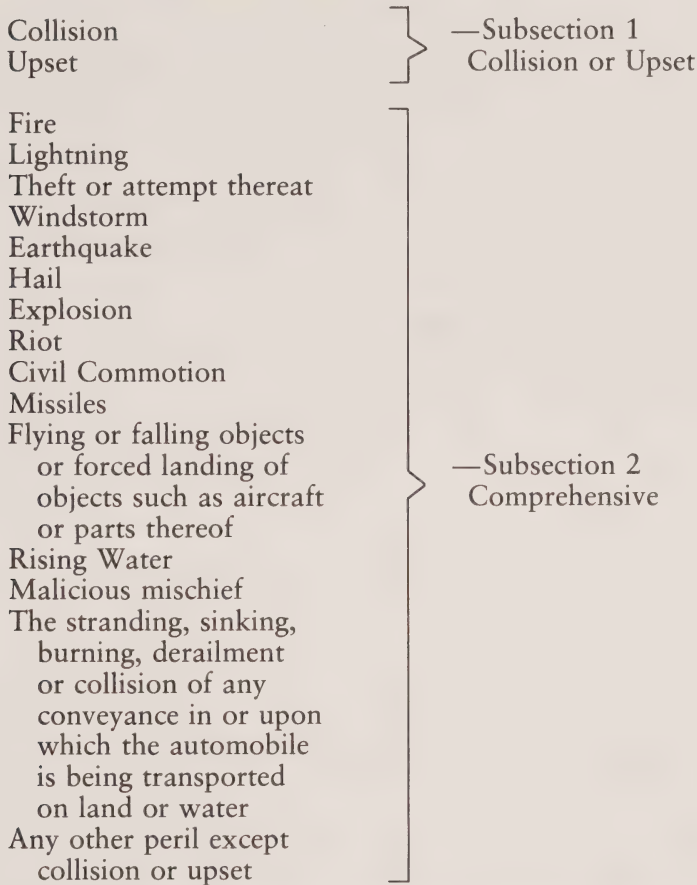
The Committee Accordingly recommends that Subsections 1, 2, 3 and 4 be deleted and that the following two Subsections be substituted:

"Subsection 1, COLLISION, caused by collision with another object or by upset"

"Subsection 2, COMPREHENSIVE, from any peril other than by collision with another object or by upset. 'Another object' includes a vehicle to which the automobile is attached and also the surface of the ground and any other object therein or thereon. 'Any peril' includes, without in any way limiting the generality of those words, loss or damage caused by fire, lightning, theft or attempt thereat, windstorm, earthquake, hail, explosion, riot, civil commition, missiles, flying or falling objects or forced landing of objects such as aircraft or parts thereof, rising water, malicious mischief or the stranding, sinking, burning, derailment or collision of any conveyance in or upon which the automobile is being transported on land or water."

The adoption of this recommendation will make the insured's choice of coverage relatively simple and understandable. It can be depicted by the following chart:

Peril covered:



The present coverages and the proposed coverages are compared in Appendix C.

Loss of Use

The Insurer's Additional Agreement (2) provides for an incidental benefit in cases where the insured is covered against theft of his automobile. Under such circumstances the insurer is required to reimburse the insured for expense not exceeding \$8.00 for any one day nor totalling more than \$240.00, incurred for the rental of the substitute automobile, including taxicabs and public means of transportation.

In view of the recent escalation in transportation costs, the amounts set out above have become entirely inadequate and **the Committee accordingly recommends** that these be increased to \$12.00 for any one day, totalling not more than \$360.00.

Special "Agreement of the Insured"

The Committee notes that an "agreement of the insured" on page 8 of the policy obligates the insured, if engaged in the business of selling, repairing or servicing automobiles, to replace the loss of or damage to the insured automobile or make the necessary repairs thereto at the *actual cost* to the insured. The Committee considers that this provision discriminates against those insured persons who happen to be in the garage business because they would appear to be required to absorb the overhead costs that would otherwise be attributable to the replacement or repair work in question. As a result they are not thoroughly compensated as other insured persons are. **The Committee therefore recommends** that this provision be deleted.

CHAPTER 9

Minimum Collision Deductibility \$250

In the preceding chapter, the various alternative forms of coverage for loss of or damage to the insured automobile were discussed. It was explained that the insured has his choice of any one of four different sub-classes of coverage: all perils, collision or upset, comprehensive and specified perils, and that these should be reduced to two: collision and comprehensive.

In addition to this choice, the insured also has a choice of deductibility, because Section C includes the following provision:

“Deductible Clause

Each occurrence causing loss or damage covered under any subsection of section C except loss or damage caused by fire or lightning or theft of the entire automobile covered by such subsection, shall give rise to a separate claim in respect of which the Insurer’s liability shall be limited to the amount of loss or damage in excess of the amount deductible, if any, stated in the applicable subsection of section C of Item 4 of the application.”

The application form has a corresponding provision for the insertion of the insured’s chosen deductibility amount.

The usual deductible amounts offered to the public are \$25, \$50, \$100, and \$250, and an insured can “self-insure” his own automobile against loss or damage up to whichever of these amounts he chooses.

In practice most policyholders have elected in recent years to choose a deductibility amount of \$100. For example, in Canada in 1974, (other than British Columbia, Saskatchewan and Manitoba) approximately 3.5 million passenger automobiles carried collision coverage. Of these, 2.1 million—that is about 60 per cent—had a deductibility of \$100. Under the latest trend to develop, however, \$250 is now becoming the norm.

The Committee is concerned about the amount of the deductibility feature because of its effect on insurance costs. It is obvious that, whenever payment has to be made for loss of or damage to an insured’s automobile, there is an inevitable element of adjusting, appraising and administrative expense that must be incurred and these expenses have to be added to the overall cost of operating the insurance system. Furthermore, the amount of such costs is not proportionately less in the case of small losses; on the contrary, the cost of adjusting and related expenses becomes absurdly out of proportion to the actual repair cost in the case of small claims.

The insurance system has tried to overcome this problem to some degree by weighting the premiums chargeable for low-deductibility coverage. For example, the following is the system of weighting that was generally adopted on a country-wide basis in making 1976 premium calculations:

- Assume that the basic deductible is \$100, and assume that the premium chargeable for it is to be treated as the norm, or standard, on the basis of which all other deductibility premiums were fixed.
- The premium for \$25 deductible was 140 per cent of the standard.
- The premium for \$50 deductible was 120 per cent of the standard.
- The premium for \$250 deductible was only 70 per cent of the standard.

Clearly the buyer of a lower deductibility amount is paying a substantially increased charge for such increased protection as he is receiving. On the other hand, even with this increased cost, he is still not paying his full share of the adjusting, appraisal and administrative costs that are generated by the lower deductibility. The result is that he is putting an unfair burden on the insurance system.

There is a further reason for the Committee's concern about low deductibilities. It is obvious that the claims for a substantial number of accidents would be excluded entirely from the automobile insurance system if no vehicle carried a lower deductibility than \$250; that is to say, all cases where the damage to the automobile was \$249 or less. In addition, even if the damage to the automobile exceeded \$250, the *first* \$250 would be excluded from the collision coverage. The result of such a change would be a very significant reduction in the charges that must currently be made for collision coverage.

The Committee has noted a further advantage that would result if the lowest available deductibility amount were fixed at \$250. This move would create a significant reduction in the total insurance needs of the province because of the removal of all under-\$250 collision claims from the insurance system and the reduction of the insurance monies payable on over-\$250 collision claims. This would result in a corresponding reduction in the amount of capital required to service the insurance system. To put it another way, it would increase the capacity of the system to service the other insurance needs of the province. The shortage of capital, or "capacity" as it is called, has been a cause of inadequate service to the public and any reasonable step to alleviate this problem can be expected to improve insurance facilities generally.

For the reasons that have been explained, **the Committee recommends** that the minimum deductibility for collision coverage permitted under Section C — Loss of or Damage to Insured Automobile be fixed at \$250.

Dissenting Opinion of:

John Ferris, M.P.P.

James Renwick, Q.C., M.P.P.

James R. Breithaupt, Q.C., M.P.P.

While there is undoubtedly merit in the argument that the automobile insurance system should be kept as simple as is practical, it is important not to give up convenience for the mere sake of simplicity.

It is self-evident that there is a very real convenience to some drivers in being able to purchase collision coverage with a deductibility less than \$250, and there is no justification in prohibiting these lower deductible amounts merely for the sake of maintaining some illusion of added simplicity. Accordingly, it is only reasonable that those who prefer a lower deductible should be able to purchase it.

Since \$25 deductible represents less than 1 per cent and \$50 deductible represents less than 4 per cent of the insured persons and in view of current costs there appears to be no reason to allow lower than \$100 deductible coverage and it should not be available. However, of the remainder of insureds carrying collision coverage 2.1 million (60.7 per cent) are at the \$100 level.

It is our recommendation that the standard rate be changed to the \$250 limit to take advantage of the potential savings, but a \$100 deductibility should be available for those who do not wish to self-insure to the higher level.

It is only fair that, although a lower deductible collision coverage should be available, the Superintendent should ensure that the buyers of such coverage should pay premiums adequate to cover their share of the additional adjusting and administrative expenses they may impose on the automobile insurance system. Under the present legislation the Superintendent has the authority to deal with rates that are unfairly discriminatory and he should be prepared to use this authority to ensure that the buyers of the lower deductible collision coverage are bearing their share of insurance costs.

PART III — PREMIUMS

CHAPTER 10

How Total Premium Requirements are Determined

Part I of this Report described certain aspects of the motor vehicle system and the basic principles that should govern the way in which automobile insurance should service that system. Part II explained the protection that the standard automobile policy should provide if the motor vehicle system is to be properly serviced.

The question that naturally follows is what should the consumer have to pay for that protection? When one considers the complexities of the automobile insurance system, it is hardly surprising to find that the asking of this seemingly simple question unavoidably generates five new questions:

1. How are total premium requirements determined?
2. How should these total premiums be allocated amongst the various classes of policyholders, considering that each such class imposes a slightly different risk upon the insurance system?
3. How should the individual applicant for insurance be assigned to an appropriate class for the purpose of determining the amount that he ought to pay for insurance?
4. What provision should be made for the insurance applicant who, although willing to pay a premium, is unwanted because of the particular risk that he imposes upon the insurance system, or for any other reason?
5. How can premium requirements be reduced?

These questions are considered in this Part. This chapter deals with the first question, — how total premium requirements are determined. The other four questions will be dealt with in the succeeding chapters.

The process of determining total insurance costs and total premium requirements, and of allocating total premium requirements amongst the various classes of policyholders is called “ratemaking”. The actual process calls for a high degree of skill because of the mathematical complexities and the actuarial subtleties that are involved. For this reason the process is little understood outside the actuarial profession and in consequence it is surrounded by a certain mystique and by a good deal of outright misunderstanding.

For example, there is a common notion that when a policyholder is involved in an accident, any subsequent increase in premium is intended

to reimburse the insurer for the claims costs paid in connection with that accident. The fact is that the ratemaker's basic approach is quite the opposite: the future premium of a policyholder who has had an accident is likely to be raised, *not* to pay for the past accident, but because the occurrence of the past accident is said to indicate that that policyholder is more accident-prone than had previously been assumed and therefore more likely to involve the insurer in claims costs in the future. This is only one example of the many misunderstandings that surround the automobile insurance system.

The Committee has encountered innumerable other examples of public misunderstanding of automobile insurance. It is not surprising that this sort of misunderstanding has resulted in a great deal of suspicion throughout the community as to the entire operation of the automobile insurance system. The Committee wishes to observe in the strongest possible terms that this suspicion need hardly exist if the industry followed a diligent and constructive policy of explaining itself to the public with clarity and candor, instead of allowing an atmosphere of mystery to surround its affairs.

A. THE INDUSTRY'S APPROACH TO RATEMAKING

When the automobile insurance industry approaches the problem of ratemaking it does so on two premises. Its first premise is that it has to establish rates on four different types of coverage that it has for sale: third party liability coverage; accident benefits coverage, collision coverage, and comprehensive or specified perils coverage. Its second premise is that claims costs will vary depending upon the part of the province (or "rating territory" as it is called) in which the automobile is used, because of varying claim frequencies and repair charges. In these respects, the insurer is in a position that is similar to a businessman who is selling a varied line of goods in different areas of the province where costs of carrying on business are different.

An automobile insurance company allows for these two variables by making a separate calculation of premium requirements for each type of coverage to be sold and for each separate rating territory in the province. In other words, a calculation is made for each of four types of coverage sold in each of 12 rating territories, — a total of 48 calculations. When these are all taken together, they constitute the company's total premium requirements for its automobile insurance business in Ontario during the period in question. An explanation of the problem of making these calculations follows.

B. A COST BUILD-UP CONCEPT

The best way of explaining the problem of making these calculations is through the use of a cost build-up concept.

It is noteworthy that this explanation is just as applicable in the case of an insurance company operating in the private sector as it is to a government owned insurance organization. It is equally applicable to a company owned by the public at large, or by a union, or a number of co-operatives. It applies equally to a company that is Canadian owned as to one that is foreign controlled.

The cost build-up concept that is to be used here for explanatory purposes is similar to the concept used by companies engaged in many other lines of business for the purpose of preparing forecasts of their budget requirements. The basic concept is simply a cost build-up, — a totalling of the net costs, expenses, taxes and profit involved in carrying on business so as to determine the total revenue that the organization must have if it is to continue in business. The concept is explained by the chart that appears on the following page. The following brief comments are keyed to the numbers on the chart:

1. Predicted claims: The item “predicted claims” represents the amounts that will be paid on this type of coverage sold in this rating territory during the period for which the calculation is being made. The problem of predicting these claims is dealt with more fully later in this chapter.
2. Cost of adjusting claims: This is the cost involved in dealing with and disposing of claims, together with any expenses that may be incurred in connection with these claims, other than the amounts paid directly to insured persons and other claimants in satisfaction of their claims.
3. Total claims costs: Predicted claims and adjusting costs are usually totalled and are referred to collectively as the “total claims costs” or “total loss costs”. It is customary in the industry to use the term “loss costs” in this context. However the term “claims costs” has been adopted throughout this Report so as to avoid confusion with such terms as “losses from operations” or “underwriting losses”.
- 4.(a) Marketing expenses: The expenses by way of commissions to agents and/or brokers or of salaries paid to the insurer’s employees, together with other selling expenses are normally grouped under the overall heading of “marketing expenses”.
- 4.(b) Administrative expenses: All expenses of carrying on the insurer’s operations, other than those specifically covered elsewhere, are grouped together under the broad heading “administrative expenses”. This item normally includes advertising expenses.
- 4.(c) Premium taxes: Premium taxes are levied by all provinces in Canada. In all provinces except British Columbia the tax is

COST BUILD-UP

Type of coverage:

Rating territory:

For the period from 197__ to 197__

1. Predicted claims for this type of coverage in this rating territory \$
2. Add the cost of adjusting these claims \$ _____
3. Gives the total claims costs for this type of coverage to be sold in this rating territory during this period \$
4. The following amounts can then be calculated for the company's *entire* operation during this period:
 - (a) Predicted marketing expenses \$
 - (b) Predicted administrative expenses \$
 - (c) Predicted premium taxes \$
 - (d) Expected after tax profit \$
 - (e) Corporation income tax \$ _____
 - Total \$
 - (f) Deduct the company's predicted investment income \$ _____
 - Balance \$ _____
 - (g) A proportion of this balance can then be allocated to the cost build-up for this type of coverage for this rating territory. (The proportion may be based on the proportion that this business is likely to bear to the company's total automobile business.) \$ _____
5. Total premium requirement for this type of coverage in this rating territory \$ _____

based on the total premiums written by the insurer. The rate of premium tax was increased in Ontario on April 1, 1976, from two percent to three percent.

- 4.(d) After tax profit: The total after tax profit that the company expects to earn on its equity can then be added at this stage of the build-up. "Equity" in this context means the capital and surplus that have been invested in the company's automobile insurance business.
 - 4.(e) Corporate income tax: The corporate income tax that the company is to pay if it is to make the after tax profit set out in 4.(d) can then be added. While there are special income tax provisions applicable to general insurance companies due to the uniqueness of their business, these companies are generally subject to income tax in the same way as are all businesses. Detailed consideration of these tax matters is beyond the scope of this Report, however specific reference is made to the subject in Appendix D.
 - 4.(f) Investment income: The company's predicted investment income should be deducted from the total of the last five items. Investment income is dealt with more fully below.
 - 4.(g) The balance, after deducting investment income from the total of the five items preceding it, represents an amount that the company must recover from *all* of its automobile insurance operations during the period in question. This amount is therefore allocated to the cost build-up for each type of coverage in each rating territory. The allocation may be based on the proportion that the business involved in each cost build-up bears to the company's total business.
5. Total premium requirement: By adding the foregoing allocation to the "total claims costs" it is possible to determine the total premium requirement for this specific type of coverage in this specific rating territory during the period in question. If one were to calculate a cost build-up for each of the four types of coverage for each of the twelve rating territories in the province, the result would be a set of 48 calculations. The total results would constitute the company's total premium requirements for the period in question.

It must be re-emphasized that the foregoing explanation of total premium requirements and their calculation applies regardless of the jurisdiction of incorporation of a company or its ownership, whether private or governmental or the social philosophy that guides it.

Once having established these total premium requirements, the means by which the total is collected can vary depending upon whether

public funds are to be used to pay all or any part of the total. Such funds can come entirely or partly from policyholders, wholly or partly from government subsidies, gasoline taxes or other sources. But the build-up of total premium requirements will not vary fundamentally.

By following the steps that have been described above, a company will have developed a series of 48 items of premium requirements,—one for each type of coverage in each rating territory,—and a total premium requirement for all the company's automobile insurance business in the province. The next logical step would be to describe the process by which each premium requirement is in turn re-allocated to various refinements of each type of coverage to be sold in a rating territory: such refinements as various policy limits in the case of third party liability coverage; various deductibilities and automobile values in the case of collision coverage or comprehensive/specified perils coverage. Before describing this process, however, it is appropriate to add further comments about some of the elements that are included in the cost build-up.

C. PREDICTING CLAIMS COSTS

The major difficulty in the entire process of ratemaking arises from the fact that total claims costs must be predicted, not only in advance, but for a substantial period in advance of the date on which the rates are set. For example, automobile insurance premiums set last July 1976 had to be applicable to twelve month policies issued between July 1, 1976 and June 30, 1977. Some of those policies would not expire until June 30, 1978 and so the premium had to be sufficient to pay claims that would occur as late as that date, and which will be settled at that time and indeed for a period of time after that. The task of the ratemaker includes the prediction of these future costs of the commodities and services that insurance premiums must pay for, including such things as hospital and medical care, wages lost through accidents, and the repair or replacement of damaged vehicles and other property.

The "Green Book"

The basis of all estimates of future claims costs is a set of statistics of the performance of the automobile insurance system in Ontario and elsewhere in Canada, other than British Columbia, Manitoba, and Saskatchewan. These statistics are gathered by the Statistical Division of the Insurance Bureau of Canada (the "I.B.C."), an organization sponsored by the vast majority of Canada's automobile insurers. The actual work of compilation is based on formal legislative sanction in that the Insurance Acts of the provinces concerned expressly authorize their Superintendents of Insurance to appoint a statistics gathering agency.¹ And these Superintendents have appointed the I.B.C. for this purpose.

1. The relevant provision of the Ontario Act is Section 78.

All automobile insurers, whether they are members of the I.B.C. or not, are required by law to report to the I.B.C. full details of every insurance transaction that takes place with respect to every policy. This information is then compiled by the I.B.C. in accordance with a system, called the "Statistical Plan" that is prescribed by the Superintendents. The cost of the I.B.C.'s work is charged to all automobile insurance companies in proportion to their shares of the total premium business and each is required by law to pay its allotment.

The end product of this statistics gathering process is the submission to the Superintendents of an annual publication which summarizes the statistics of claims costs for the immediately preceding years in accordance with the prescribed Statistical Plan. The statistics are set out under a number of headings: by reporting provinces in total, by individual province, by coverage, by rating territory, by type of vehicle use, by deductibility limits, etc. This publication is generally referred to as the "Green Book".

It should be noted in passing that the function of the I.B.C. in this area is limited to the preparation of the statistics of actual claims costs and related matters in accordance with the prescribed Statistical Plan. It does not officially participate under the Statistical Plan in the process of translating these statistics as to past claims costs into future premiums. It does, however, issue a confidential memorandum commenting on how the data in the Green Book might be translated into premium rates. The process of ratemaking is the responsibility of the insurers themselves, or of separate associations of insurance companies, called "rating bureaus", the principal bureau being the Insurers Advisory Organization (the "I.A.O."). The rating bureaus analyze the Green Book statistics and advise their member companies about future premium rates.

The information in the Green Book is used by the ratemakers to compare the provisions for claims costs in current premium levels with claims cost levels over a number of preceding years. This is done in order to evaluate the adequacy of current premium levels and to provide a measure of the degree to which levels are changing from year to year. The end result of this process of evaluation is a forecast as to the claims costs for each type of coverage for each rating territory for the approaching policy period.

The Committee has had the advantage of observing at first hand the present process of translating Green Book information into predictions about rising levels of claims costs and from there the development of predictions of increased premium requirements. In June 1976, shortly after the Committee's hearings began, representatives of the I.A.O. recommended substantial increases in premiums to its members. The principal reason that the I.A.O. gave for this increase was the expect-

ted effect of inflationary trends. The Superintendent of Insurance, Mr. Murray A. Thompson, Q.C., and his Director of Insurance Services, Mr. Lear P. Wood, F.C.I.A., disagreed principally with the inflationary factor anticipated by the I.A.O. and argued that a lower inflationary factor should be used that would result in smaller premium increases. As a result the increases implemented by the industry were somewhat lower than those recommended by the rating bureau.

D. INVESTMENT INCOME

All insurance companies earn investment income because by the very nature of their business they receive large premium payments in advance for the protection that they provide, and because they must keep on hand sufficient assets to meet their obligations until the exact amounts are determined and paid.

Some representatives of the insurance industry have argued that earnings on investments should be viewed as the return on a "separate business" from that of insurance and should not be taken into account in evaluating the underwriting portion of an insurance company's operations. The Committee categorically disagrees with this view. In the Committee's opinion it is logical to consider investment income as an integral part of an insurance company's total income. It must clearly be treated as part of a company's income and must be taken into consideration so as to reduce the total revenue an insurance company needs by way of premiums. **The Committee recommends** that insurers should be directed not to publicize their underwriting results as distinct from the results of their total operations, including any investment income. For greater clarity, the Committee wishes to add that the investment income to be taken into consideration is not only that which is derived from unearned premiums, but also that which comes from the equity used in the business.

E. PROFIT ON EQUITY

The subject of sources of available capital to finance the property and casualty insurance industry, of which automobile insurance forms a part, in the Province of Ontario and in Canada, and the earnings of these companies in the recent past are dealt with in some detail in Chapter 27 of this Report. In addition, the rate of return on equity in this industry compared to that in other industries appears in Appendix L and indicates that profits realized in the property and casualty insurance business in recent years are below average.

The Committee does not consider it necessary to its present deliberations to have to determine what an "adequate" profit is in this industry. It is sufficient to point out that the amount of profit the industry earns

has a direct bearing on the industry's capacity to provide for continuously expanding future needs. This is partly because profits help to provide the capital to service expanding needs and also because the level of such profits may attract or discourage the investment of additional funds into the industry. To provide a sufficient return to those who have invested in the insurance industry to encourage continual investment, it is suggested that the return needs to be comparable to that of other industries in which the risk to which the investor's capital is exposed appears to be comparable.

Determining an amount that an insurance company needs to earn so that it can meet future demands for insurance is difficult. Most regulatory authorities in Canada and in the United States agree that an insurance company should be limited in the amount of business that it can write in any year to two times the amount the shareholders have invested in the company, i.e., the shareholders' equity. Currently, then, if a company is to continue to insure *only* the same number of cars next year as it is insuring this year, assuming an overall 8 percent inflation rate, it must have an increase of 8 percent in the equity in its business. It is important to note that with this increase the company is in no position to provide coverage for the *new* cars that will be coming onto the roads in the next year, and historically the net automobile population has increased at close to six percent per year. If the insurance industry is able to earn a return on the funds invested in it which investors in general consider adequate, the industry should be able to retain and/or attract sufficient funds to ensure adequate capacity; otherwise it may not.

F. ESTABLISHING VARIOUS PREMIUM LEVELS WITHIN EACH TYPE OF COVERAGE

In section B of this chapter, we explained the process of determining a total premium requirement for each coverage in each rating territory. The next step in the ratemaking process is the further allocation of those requirements amongst the various refinements of each type of coverage to be sold in a rating territory: various policy limits in the case of third party liability coverage, and various deductibilities or automobile values in the case of collision, comprehensive and specified perils coverage.

As a result of the process described in section B above, the ratemaker will have determined a percentage by which each type of coverage in each rating territory must be adjusted. In a simplistic example, assuming all "other factors" remain unchanged, if the ratemaker's analysis indicated that a 15 percent increase is required for collision coverage, he would apply this to all this year's collision coverage to establish next year's premium. However, the "other factors" do not in practice remain unchanged from year to year. Ratemakers have therefore resorted to the use

of a system of so-called “base coverages” to which the required increase in premium is applied as the first step in determining and balancing the premiums to be charged on each refinement of each coverage that the company is to sell.

A “base coverage” is that particular refinement in a type of coverage that ratemakers treat as the standard, or the “norm”, for that type of coverage. In the case of collision coverage, a deductible of \$100 is the “base coverage” and deductibles of \$25, \$50 and \$250 are considered mere variants of the “base coverage”. In the case of comprehensive or specified perils coverage, the “base coverage” is taken to be that which involves a \$25 deductible and such other deductibles as \$50, \$100 and \$250 are mere variants. In the case of third party liability coverage, the “base coverage” adopted by the ratemakers is \$35,000 and other variants of that coverage, such as those with limits of \$100,000, \$200,000, etc., are deemed to be variants from the “base coverage”.

The Green Book shows premiums and loss experience by each deductibility in the case of collision, comprehensive and specified perils coverages and by policy limit in the case of third party liability coverage. As a result, it is practical to work out comparisons of claims costs for each variant of each type of coverage. It is therefore practical to treat the base coverage as a sort of bench mark of 100 percent and to calculate the extent to which claims costs on the variants deviate from the base coverage. This deviation is expressed as a percentage of the claims costs for the base coverage. This is made clearer by observing how this procedure works in the case of each specific type of coverage:

1. Collision coverage: In 1974 there were slightly more than 3.5 million private passenger automobiles covered for collision damage as reported in the Green Book. Of these, 2.1 million vehicles carried \$100 deductible coverage. For this reason, the \$100 deductible policy was used as the base for the industry’s calculations. The ratemaker reviews the country-wide statistics each year in an attempt to derive a relationship between the risk exposure for the \$100 deductible vehicles and automobiles carrying the other three levels of deductibility (\$25, \$50 and \$250). It is apparent that a substantial number of accidents would be excluded entirely if vehicles carried \$250 collision coverage (i.e. all accidents in which the repair costs range between \$100 and \$249). Further, the cost to the insurers of each accident involving more than \$250 in damages would be reduced by \$150. Thus, the purchaser of a \$250 deductible policy should not have to pay as much for his coverage as the purchaser of a \$100 deductible policy. The reverse situation would be the case if an insured purchased \$25 deductible coverage.

Following analyses of the country-wide experience, a relativity table for use in the 1976 rating program was produced as follows:

\$ 25 deductible	140% of \$100 deductible premium;
\$ 50 deductible	120% of \$100 deductible premium;
\$100 deductible	100% since it is the base coverage; and
\$250 deductible	70% of \$100 deductible premium.

Using a table such as this, the ratemakers need only calculate an appropriate premium for the \$100 deductible coverage. The premiums for other types of deductibility coverage can then be calculated easily.

2. Comprehensive Coverage: Similar calculations to those outlined for collision coverage were made for comprehensive coverage with the result that the following relativity table for use in the 1976 rating program was prepared:

\$25 deductible	100% since it is the base coverage;
Full coverage	200% with minimum additional premium
	of \$5; and
\$50 deductible	75%.

3. All Peril and Specified Peril Coverages: Since all perils coverage is in effect a combining of collision and comprehensive and since specified perils coverage is designed to afford protection against specific occurrences that form a part of comprehensive, relativity tables for various deductible levels for these coverages are usually established based on analyses of collision and/or comprehensive coverage rather than detailed analysis of all peril and specified perils policy experience. The relativity table for use in the year 1976 rating program for all peril deductibles was as follows:

\$ 25 deductible	....	100%	since it is the base coverage;
\$ 50 deductible	....	85%	of \$25 deductible;
\$100 deductible	....	70%	of \$25 deductible; and
\$250 deductible	....	45%	of \$25 deductible.

The comparable table for specified perils differentials is:

\$25 deductible 100% since it is the base coverage and
Full coverage 200%.

4. **Third Party Liability Coverage:** Third party liability policies have historically been issued with limits ranging from \$35,000 to \$1,000,000. It is interesting to note, however, that the Statistical Plan requires only that all transactions be reported for policy limits \$35,000, \$50,000, \$100,000 and \$200,000 and over, so that the last category includes policies with \$300,000, \$500,000 and \$1,000,000 limits. Therefore, any conclusions concerning experience for higher coverages are based on the opinion of the ratemaker rather than statistical fact.

The relativity table for various limits of third party liability coverage used in the 1976 rating program was as follows:

\$ 35,000 inclusive	100% since it is the base coverage;
\$ 50,000 inclusive	109% of \$35,000 inclusive limit;
\$ 100,000 inclusive	115% of \$35,000 inclusive limit;
\$ 200,000 inclusive	121% of \$35,000 inclusive limit;
\$ 300,000 inclusive	125% of \$35,000 inclusive limit;
\$ 500,000 inclusive	129% of \$35,000 inclusive limit; and
\$1,000,000 inclusive	136% of \$35,000 inclusive limit.

CHAPTER 11

How Individual Premiums are Set: The Classification System

Except for one very important consideration, if the ratemaker were to follow the steps outlined in the preceding chapter, he could establish the premium that each policyholder should pay for the coverage he wants. The ratemaker would have

- estimated future costs in the “cost build-up”,
- determined the percentage change required in the base premium for the base coverage for each type of coverage in each rating territory, and
- by applying differentials for various deductibles and liability limits, determined the premiums that need to be charged to the policyholder for each variant of every type of coverage to be sold in each rating territory.

If this were all that there is to ratemaking, it would be relatively simple and would satisfy the first principle of insurance which is that the premiums of the many should go to meet the losses of the few. The procedure would be only slightly more sophisticated than merely determining the total premium requirements for a policy period and dividing this total by the number of drivers so as to establish an equal, average premium that all would have to pay.

There is, however, a second principle of insurance that would not have been taken into account if the ratemaking process stopped there. This principle is that the premiums charged to individual policyholders should in all fairness to them, vary as much as is practical in accordance with the degree of risk that they impose upon the insurance system. It inevitably follows from this principle that individuals who impose a substantially similar risk upon the system should be classified into the same class for the purpose of calculating the premiums that they ought to pay. It is therefore essential to establish a series of classes of policyholders, based on similarity of risk.

A. THE CLASSIFICATION SYSTEM

In Ontario and throughout most of Canada, statistics concerning the relative degrees of risk that drivers and their automobiles impose upon the system have traditionally been compiled on the basis of the following factors:

1. Use and Age classes:
 - the use of the vehicle, whether for pleasure or business, or for both, and
 - the age of the principal operator and the ages of occasional operators.
2. Driver Accident Record classes:
 - the accident record (*not* the driving offence record) of the driver.
3. Rating territories:
 - the area in the province in which the policyholder resides. This factor is taken into account when total premium requirements for each type of coverage for each rating territory is being considered.
4. Automobile Rating groups:
 - the value of the insured's vehicle.

These factors are dealt with in an explanatory way under the following sub-headings and more intensively in Appendix E.

1. *Use and Age Classes*

The Statistical Plan classifies all drivers into 14 separate classes, depending upon the use to which the vehicle is put and the age of the operators. In summary these classes are as follows:

- Pleasure: no male driver under 25, no unmarried males age 25 to 29 inclusive; no female principal operators under 25, no unmarried female occasional operators under 25. These policyholders are classified as:
 - Class 01: No driving to work, and annual mileage of 10,000 miles or less.
 - Class 02: Driving to work 10 miles or less, and unlimited annual mileage.
- Pleasure: no male driver under 25, no female principal operator under 25.
 - Class 03: Driving to work over 10 miles.
 - Class 04: Unmarried male principal operator age 25 to 29 inclusive.
- Pleasure and/or Business:
 - Class 06: Occasional male driver use under 25.
(Note — principal operator insures the automobile under another class.)

Class 07: Business primarily; and no male drivers under 25.

—Principal Operator a male under 25:

Class 08: Married male age 20 or under;
 Class 09: Married male age 21 to 24 inclusive;
 Class 10: Unmarried male age 18 or under;
 Class 11: Unmarried male age 19 or 20;
 Class 12: Unmarried male age 21 or 22;
 Class 13: Unmarried male age 23 or 24.

—Principal Operator a Female under 25:

Class 18: Married or unmarried female age 20 or under;
 Class 19: Married or unmarried female age 21, 22, 23 or 24.

The use of a system of “base coverage” for the purpose of establishing premium requirements for each variant within each type of coverage has been explained in the preceding chapter. A similar system of utilizing “base classes” is also used in connection with the driver classification system. In the case of use and age classes, since the largest single category within the use and age class is the 02 class, this has been chosen as the “base” class. After reviewing country wide data, ratemakers have concluded that if the 02 class is to be taken as representing 100 percent in terms of premium, the 01 class differential should be 87 percent. Similar calculations have been made for the other use and age classes. The resulting differentials for the Ontario 1976 rating program were as follows:

Class	Third Party Liability		Collision		
	Urban	Rural	Urban	Rural	
01	87%	95%	87%	91%	the “base” class
02	100%	100%	100%	100%	
03	110%	130%	115%	140%	
04 & 13	163%	180%	199%	237%	
06	75%	87%	69%	92%	
07	124%	130%	123%	140%	
08 & 09	140%	145%	156%	192%	
10 & 11	269%	312%	368%	487%	
12	203%	256%	283%	377%	
18 & 19	120%	135%	160%	179%	

When the ratemaker has established the appropriate premium for drivers in the 02 class, it is a simple matter to establish the premium for each of the other use-and-age classes by multiplying it by the appropriate differential. The premium for class 10 urban policyholders, for example, will be 269% of the 02 urban premium insofar as the third party liability premium is concerned.

2. *Driver Accident Record Classes*

Ratemakers have concluded that a driver with an accident record is a greater risk than a driver with an accident free record. Consequently, the Statistical Plan also classifies drivers in driver accident record classes as follows:

- Record 5: five accident-free years immediately prior to the effective date of the policy;
- Record 3: three such accident-free years;
- Record 2: two such accident-free years;
- Record 1: one such accident-free year; and
- Record 0: no accident-free record within the year immediately prior to the effective date of the policy.

It should be noted that a policyholder who is classified as a Record 3 risk who is involved in an accident may immediately drop to a Record 0 for renewal purposes. However, the Record 0 rate charged to this policyholder will be the same whether the accident in which he was involved cost the insurer \$100 or \$100,000.

Traditionally, new drivers have been classified as Record 0 drivers although some driver training discounts have been granted. A recent announcement by the Insurance Bureau of Canada indicated that the industry intended to change its practice effective January 1, 1977 and would rate new drivers who have passed approved driver training courses as Record 3 and all other new drivers as Record 1.

Studies of the historical data that are available have led to the conclusion that the risk of accident decreases during each of the first three years following an accident. Since the largest single category in terms of the number of drivers included in it has been the Record 3 category, this has been chosen as the "base" category. (Record 5 is a relatively new category.) After receiving country-wide data, ratemakers have calculated that if the Record 3 category is to be taken as representing 100 per cent in terms of premium, the resulting differentials for the Ontario Driver Accident Record classes are as follows:

Driver Accident Record 0	....	178 percent
Driver Accident Record 1	....	149 percent
Driver Accident Record 2	....	131 percent
Driver Accident Record 3	....	100 percent since it is the "base"
Driver Accident Record 5	....	90 percent

These correspond approximately to discounts of 16, 26, 44 and 49 percent from driver accident record 0 for 1, 2, 3 and 5 accident-free years respectively. It might be noted that a discount has recently been introduced by many companies for five accident-free years. However, statistics in the Green Book for five years' accident-free driving were set out for

the first time in 1976. The increase in discount from Record 3 to Record 5 is therefore based on a mere estimate of loss experience and may be subject to revision in future years as further claims costs experience is developed. The Committee reiterates here the importance of the adoption of an "accident-free bonus" campaign, as more fully discussed in Chapter 14.

3. Rating Territories

This factor has already been discussed in Chapter 10.

4. Automobile Rating Groups

An inexpensive automobile can do just as much damage to a third party as an expensive one so no account is taken of the value of the insured's vehicle in calculating premiums for third party liability coverage or Accident Benefits Coverage. On the other hand, ratemakers have assumed that the value of the vehicle bears a relationship to the extent of the insurer's risk in the case of collision, comprehensive, all perils and specified perils coverages. For this reason, all motor vehicles are divided into a minimum of eight automobile rating groups ranging from Group 1 (the least valuable) to Group 8 (the more valuable), with a special group for luxury cars that have a value beyond the upper limit of Group 8.

There are no historical data compiled for differentials in automobile rating groups comparable to those that have been compiled for Use-and-Age and Driver-Record differentials. The grouping of all makes of automobiles into the eight standard groups is done on the basis of new list prices at Toronto. While investigations of alternative methods of classification have been carried out from time to time, no more suitable basis has been found and accepted by the industry. Under the present method automobiles tend to stay in the same automobile rating group for two or three years instead of dropping to a less valuable group each year as they depreciate. The ratemakers maintain that the use of depreciation as the method of valuation would only be appropriate in the case of the total loss of an automobile and since total losses account for only a small percentage of collision or comprehensive claims, the use of depreciation alone would, in the industry's opinion, reduce values too rapidly. Most claims under collision coverage, comprehensive coverage, all perils coverage or for specified perils coverage are for partial loss or repair costs or for the cost of replacement parts. The cost of such claims tends to be approximately as high for used automobiles as for new ones.

It is obvious, however, that the total value of automobiles decreases with the passage of time. This is reflected to some degree in the fact that, after staying in the same automobile rating group for two or three years, automobiles descend by one level and in subsequent years, by further levels.

Group 4 has been chosen as the "base" group, so that if it is to be taken as representing 100 percent in terms of premium, the resulting differentials for the other Automobile Rating Groups for the Ontario rating programme are as follows:

Group 1	60 percent
Group 2	71 percent
Group 3	84 percent
Group 4	100 percent since it is the "base"
Group 5	118 percent
Group 6	139 percent
Group 7	164 percent
Group 8	194 percent

B. RATE MANUALS

In summary, a policyholder's premium for each of the various types of insurance coverage that he purchases must be calculated by taking the following factors into consideration:

— Third Party Liability Coverage:

- Rating territory,
- Use-and-Age class,
- Driver-Record class and
- Policy limit.

— Accident Benefits Coverage:

This coverage is assumed to be unaffected by any of these factors and so there is a single rate for all drivers in all territories throughout the province.

— Collision and All Perils Coverage:

- Rating Territory,
- Use-and-Age class,
- Driver-Record class,
- Automobile Rating group and
- Deductibility amount.

— Comprehensive and Specified Perils Coverage:

- Rating Territory,
- Automobile Rating group and
- Deductibility amount.

— Any applicable Driver Offence Surcharges, explained below.

Since across Ontario there are 14 use and age classes, 5 Driver Accident Record classes, 12 rating territories and 8 automobile rating

groups, as well as 4 deductibles for collision, comprehensive, and specified perils coverage, 3 deductibles for comprehensive and specified perils coverage and 6 standard limits for bodily injury and property damage, the permutations and combinations of the various categories are awesome. The table below indicates the number of potential cells into which drivers and/or automobiles might be fitted for each type of coverage:

Type of Classification	Third Party Liability	Collision and All Perils	Comprehensive and Specified Perils
Use and Age	14	14	-
Driver Accident Record	5	5	-
Rating Territory	12	12	12
Auto Rating Group	-	8	8
Limits and Deductibles	6	4	3
Total Potential "Cells"	5,040 ¹	26,880 ²	288 ³

All of these permutations and combinations are translated into premium dollars and are then summarized by each company in its rate manual and the manual is then used by the salesmen in quoting rates to potential customers. In practice, the application of this many celled classification system to the individual policyholder is in no way as complex as it appears. This is because each individual insurance purchaser identifies one Use-and-Age class, one Driver-Record class, one Rating Territory and one Automobile Rating Group when describing himself. He then selects the types of coverages that he wants to buy, keeping in mind that if he selects third party liability he *must* automatically buy accident benefits coverages as well. He also indicates his choice of policy limits and deductibles. At present a driver in Ontario has a total of 140 combinations of coverages (including the option of not buying a coverage) to choose from: seven third party liability, five collision or all perils and four comprehensive or specified perils ($7 \times 5 \times 4 = 140$). The purchaser's options increase if he is able to select different use-and-age alternatives such as including a teenage driver or driving or not driving to work. Each combination of alternatives can require reference to several pages in the rate manual.

While some companies writing automobile insurance in Ontario have the staff and other resources to go through all of the steps that have been outlined to prepare their own rate manuals, a great many others do not, and so they use the services of the Insurers Advisory Organization (IAO) and, as noted, the figures quoted to this point in this chapter have been based on those used by IAO in their 1976 rating program.

1. $14 \times 5 \times 12 \times 6 = 5,040$
 2. $14 \times 5 \times 12 \times 8 \times 4 = 26,880$
 3. $12 \times 8 \times 3 = 288$

The IAO is the largest rating bureau in Canada. It calculates on an advisory basis the premiums that it feels that its members need to charge for each coverage and then forwards these suggestions to its members. It is then left to the individual members of IAO to decide whether they will adopt the suggested premium rates or whether they prefer to adjust them in the light of their own particular circumstances, experience or estimates.

The investigations that were made by the Committee's consultants into rating practices in Ontario indicated that all companies follow some form of "cost build-up" concept and that all follow substantially the same basic procedures in determining individual premiums.

The bases for IAO's calculations and for its recommendations as to premium rates for private passenger cars are those statistics contained in the Green Book that relate to the experience of IAO members. However, the Green Book contains, as well, private passenger car experience for the *total* industry, i.e. including insurers other than IAO members. Individual companies that set their own rates use statistical bases they feel most closely approximate their own experience. If a company is large enough it may rely heavily on its own experience. Some of the larger U.S. controlled companies also utilize statistical information developed in the course of their American experience.

From our consultants' investigations, it is clear that all companies use differential systems that are very similar, although there are many examples of individual companies making minor modifications to the IAO structure, for example:

- (a) Some companies have increased the number of Use-and-Age classes through the use of more age groupings and different mileage cut-off points.
- (b) While most companies use a 0, 1, 2, 3, and 5 year accident-free structure in the course of the Driver-Record classification process, there are frequently differences in the way drivers, having reached the five-year plateau, are treated if they have one or more accidents.
- (c) One company does not use the differential approach to the number of years of claim-free driving. Rather, this company employs a system of claims service fees in the case of accident. This has the effect of charging the adjusting cost of an accident to a claimant over a period of two years.

C. DRIVER OFFENCE RECORDS AND SURCHARGES

The results of the calculations that are described above are reflected in an insurance company's standard rate manual. This manual is then used for calculating the standard premium that the policyholder is re-

quired to pay. However there is one further step that must be taken in order to determine the final premium. This is the calculation of any surcharge for driver offences that the insurer may have decided to levy.

These surcharges are expressed as a percentage of the standard manual premium. If there is more than one surcharge for driver offences, the percentages for all of the surcharges are totalled and then applied to the standard rating manual premium. The surcharges are calculated in the following manner.

Where a policyholder or principal operator has within the period of 36 months immediately preceding the date of commencement of the policy:

1. been responsible for more than one accident, the surcharge is
 - (a) in the case of two accidents — 25 percent;
 - (b) for each additional accident — 15 percent;
2. been convicted of any offence under any Act governing highway traffic involving
 - (a) — failure to report an accident or to give his name and licence number to police or other persons entitled to such information;
— driving without due care and attention;
— racing;
— an offence committed outside Canada that is substantially the same as the three foregoing offences;
— the surcharge for each such conviction is . . . 50 percent;
 - (b) — improper passing of schools or playgrounds;
— an offence committed outside Canada that is substantially the same as the foregoing offence;
— the surcharge for each such conviction is . . . 25 percent;
 - (c) — breach of speed limits; other moving traffic offences relating to driver capability or to the mechanical safety of a motor vehicle;
— the surcharge for the first two convictions is none;
— the surcharge for each subsequent conviction is 25 percent;
3. been convicted under the Criminal Code of Canada of any one of the following offences or has been convicted of an offence outside Canada that is substantially the same as any one of the following offences:
 - criminal negligence committed in the operation of an automobile;
 - manslaughter committed in the operation of an automobile;

- failing to stop at the scene of an accident;
- impaired driving;
- failure or refusal to submit to a breathalyzer test;
- failure to pass a breathalyzer test;
- driving a vehicle while licence under suspension;
- dangerous driving;
- the surcharge for each such conviction is . . . 100 percent.

While the surcharges are cumulative, there is a maximum allowable surcharge in that the application of the surcharges may not result in a total in excess of

- (a) in the case of an unmarried male owner or principal operator under 30, the standard rate manual premium plus 100 percent; and
- (b) in the case of other private passenger risks, the standard rate manual premium plus 200 percent.

CHAPTER 12

Risk Selection

Chapters 10 and 11 explained the major steps in the process of ratemaking,—the determination of total premium requirements for each type of coverage; the determination of the rates for various deductibles and policy limits within each type of coverage, and finally the determination of individual premiums for each of the many classes of policyholder. The end product of this ratemaking process is a rate manual to be used in ascertaining the premium that is appropriate for each driver.

Ratemaking is the involved process of converting individual statistics about individual drivers and accidents into a system of classification for drivers and of premium rates for each class within that classification system. The underwriting process which now begins, starts with the individual applicant for insurance and determines whether he is acceptable as an insured and, if he is, the classification to which he is to be assigned and therefore the premium that he must pay.

The ratemaker's stated object is to apply actuarial methods to loss experience with as much objectivity as possible. Underwriting (risk selection) is carried out on a much more subjective level.

As awesome as the number of classes or "cells" in the classification system in prevailing use may be, each class is very broadly defined from a statistical point of view; that is to say, policyholders that are grouped together in any single class may still be very numerous. There may therefore be a very substantial gradation in risk between the least risky class member at the one extreme and the most risky member of that class at the other extreme. It follows that about one-half of the members of any specific class are better risks than the average and the remainder of the class members are worse risks than the average. Risk selection in its simplest form is the process whereby an insurer seeks to insure more than its share of above-average drivers in each class and tries to minimize the below-average drivers in each class to whom policies are issued. If the insurer succeeds in this process it thereby reduces the claims that it will have to pay on the policies in each class and thus it will have better overall results.

The adverse result of this entire process of risk selection is, however, that below-average drivers in each class may find that they are generally unwanted throughout the automobile insurance system. One might conclude that increasing the number of classes or "cells" in the classification system might improve or resolve the problems that can face such below-

average drivers under the existing classification system. In theory this is true but it may be difficult to apply on a practical basis. In a limited theoretical sense the ultimate ideal would be to consider each person as an individual, with no attempt to fit him into a class with others. This would involve the insurer in the evaluation of the anticipated cost of insuring each policyholder individually on the basis of a subjective assessment of that individual. There would be no objective data on which to base a decision without comparing that policyholder's claims record to that of some defined class. Individual rating such as this is impossible and indeed is a contradiction in terms.

Each policyholder must therefore be fitted into a pre-defined class in a classification system. The real and practical question therefore becomes how narrowly to define each class. The smaller and more closely defined the classes, the less the variation will be within each class from the least risky member at the one extreme to the most risky member at the other. Any such tightening of the classes within the classification system will tend to reduce the disadvantages to the consumer of the risk selection process because, as the degree of risk between the two extremes in the class reduces, there is a corresponding diminution in the advantage to the insurer of carrying on any concerted process of risk selection or rejection.

However, a very real disadvantage will result from any increase in the number of classes in the classification system. This disadvantage arises from the fact that, with smaller classes there will be less claims experience information for each class and as the claims experience information diminishes, the possibility of a chance occurrence distorting the claims results increases. There is the further disadvantage that, as the number of classes increases, the system becomes correspondingly more complex and correspondingly more costly to administer.

In summary, the advantages of increasing the number of classes in the classification system must inevitably be balanced against the disadvantages that have been described.

The adverse consequences of risk selection become most pressing when some automobile insurance companies follow a risk selection process that is significantly more rigorous than that followed by other companies. The result is that some companies, often the larger companies, end up with a portfolio of policies covering an excessive share of the better than average drivers in each class. In order to compete, other companies may be forced to follow the risk selection process with a similar degree of rigour. As a consequence, very real problems may arise in the providing of insurance for drivers in the worse than average half of each class. It is for these reasons that some means of having all of the companies share the risk for the below-average drivers in each class is important.

The Risk Selection Process

It should be re-emphasized that risk selection is a subjective process carried on by the individual companies. Underwriters in each company have established various tests for separating the substandard risks in a class from the above-average risks in that class. Most insurers incorporate these tests into an underwriting guide which is used to supplement their rate manual and they expect their agents or sales representatives to use these tests in the underwriting guide in addition to the criteria in the rate manual when they are reporting upon individual applicants for insurance. The Committee's consultants reviewed a number of these underwriting guides. It was apparent that, while there was some variation from company to company in the tests that were listed, there was a number of common elements. The following is a sample list drawn from the underwriting guides of several different companies:

1. Any person having a record of dangerous driving or known by the agent to drive dangerously.
2. Any person having an unsatisfactory driving conviction record.
3. Any person having an unsatisfactory accident record.
4. Any person who takes strong medication or drugs.
5. Any person who makes excessive use of intoxicants.
6. Any person working in certain types of occupations or professions, including:
 - (a) barmen,
 - (b) distributors of alcoholic beverages,
 - (c) gambling,
 - (d) illegal or illicit activities,
 - (e) professional athletes, musicians and entertainers,
 - (f) unmarried youthful members of armed forces,
 - (g) race car drivers.
7. Any public bus or taxi.
8. Any principal driver over 70.
9. Any principal driver under 25 where all other available automobile insurance of the applicant (or his family if he resides with them) is not with the company.
10. Any person likely to be difficult to deal with.
11. Any person who has resided in Canada for a limited period of time or who is not acquainted with usual motor vehicle laws and who may be difficult to defend because of language difficulties.

12. Any person with no apparent occupation or means of support.
13. Any person with less than 12 months driving experience in Canada or the United States.
14. Any person residing in a neighbourhood having a high crime rate or a high proportion of old rundown cars, homes or business properties.
15. Any motorcycle, snowmobile or other recreational type vehicle where all other available automobile insurance of the applicant is not with the company.
16. Any sports car, racing car or high performance car.
17. Any person who is an itinerant, transient or who has an indefinite mailing address.
18. Any person who is physically or mentally impaired.
19. Any vehicle with a fiberglass body.
20. Any emotionally unstable person.
21. Any older or low value vehicle, unless a certificate of mechanical fitness, policy inspection or Department of Transport check indicates good mechanical condition.
22. Any person from whom the agent does not feel that he has obtained adequate information.
23. Any person subject to personal or financial criticism.
24. Any person who is a poor moral risk.
25. Any altered or customized automobile.

Again, it must be repeated that this is not a list prepared by any one company, but is a selection of similar rules from a number of companies. There is inherent in the use of such tests a very real potential for abuse and improper discrimination and the foregoing list clearly illustrates this point.

Risk Selection by Rating Territory

An aspect of risk selection that is more difficult to assess concerns risk selection by rating territory or geographical area. Not all companies write in all territories in the Province of Ontario. Most of the smaller companies seem to be selective as to the areas in which they do business and although the larger companies tend to do business on a province-wide basis, even some of them are selective as to areas that they will accept. As might be expected, it is the more populous urban centres and

surrounding areas that are most intensively serviced. The industry attributes this to the fact that it is easier and less expensive to start business in an area of high population density and that business growth is quicker in such areas. They also emphasize that as time passes the companies expect to grow outward into less densely populated areas as they get larger. A few companies also acknowledged to the Committee's consultants that the fact that they have limited capacity to write insurance influences their decision to confine their business to dense population centres, more notably the southern portion of the province.

"Practical" as these considerations may be, the result from the point of view of the consumer is that the advantages of competition for his automobile insurance business decrease as one moves to the less populous areas of the province and indeed the simple problem of availability may become serious in outlying areas. In view of this fact and in view of the Committee's recommendation that third party liability insurance be made compulsory, the industry must take immediate steps to remedy this situation.

CHAPTER 13

Closing the Gap in The Availability of Insurance Facilities

The result of the risk selection process that was described in the preceding chapter is that certain groups within the driving community may have difficulties in obtaining the benefit of the automobile insurance system. These groups can be listed briefly.

One group consists of insurance applicants who happen to fall into the "below-average" half of their own particular driver class although they are not high-risk drivers in any absolute sense. These drivers have been described in the preceding chapter.

Another more important manifestation of the problem arises in the case of the high-risk driver. In such cases insurers may be hesitant or unwilling to provide coverage.

Taxi drivers appear to have had regular difficulties in obtaining insurance coverage at affordable rates. Taxi drivers from Sudbury and London were particularly vocal about this problem during the period of the Committee's sittings. Indeed on one occasion during the Committee's deliberations, spokesmen for these drivers threatened a sit-down strike in the Superintendent's office if coverage were not made available. Industry representatives who were questioned about this problem replied that the argument was not all one-sided, that the taxi drivers traditionally worked together to find an insurance company that would grant them the lowest possible rates. Then when a company found it impossible to maintain such low rates, taxi drivers switched en masse to another company. As a result, insurers who dealt with taxi drivers claimed to find their business to be demoralizing and destabilizing. In consequence the taxi business had, according to insurance industry representatives, acquired an element of unpopularity so that insurers would only deal with taxis at very high premium rates and in fact many insurers preferred not to deal with them at all. Whether taxi drivers actually contribute to their own problem by their insurance buying policies is not a matter that the Committee needs to decide. It is sufficient to say that the Committee finds that the existence of the taxi industry is in jeopardy because of problems of insurance availability. This is a further indication of the need for some solution to problems of inadequate availability of insurance services.

A third problem of shortage of insurance facilities became apparent when the Committee discussed with the Superintendent and with the agents the problem that had existed in obtaining coverage for mopeds

and seasonal vehicles such as snowmobiles. It was clear to the Committee that difficulties had existed up until recently in obtaining insurance coverage for such vehicles. While the problem appears to have been alleviated, there appeared to be a real possibility that it might recur.

Members of the Committee who represented northern constituencies explained that insurance coverage was difficult to obtain in the north and that it frequently happened that constituents simply were unable to obtain coverage at any price. While this applied to private passenger automobiles, the problem was found to be even more critical in the case of such specialized heavy commercial vehicles as lumber trucks.

In the course of hearing testimony from various insurance agents representing the Independent Insurance Agents and Brokers of Ontario (the "I.I.A.B.O."), the Committee found that there were numerous other failures in the delivery of insurance services that could be traced to the unwillingness of insurers to grant coverage. Instances of unwillingness to accept automobile insurance applications unless the applicant included his property insurance in the package were mentioned and it appeared that the practice continues despite the "tied selling" provisions of the Combines Investigation Act.¹ Complaints were also heard of threats of agency cancellation if high risk applications continued to be filed. There were also allegations that insurers delayed the processing of insurance applications filed by agents on behalf of high-risk drivers for long periods of time. The Committee does not propose to analyze each of these many complaints in detail. It is sufficient to say that the Committee is satisfied that they indicate that serious gaps and delays in the delivery of insurance coverage exist because of unwillingness or hesitancy on the part of insurers.

The automobile insurance system's failure to provide adequate insurance coverage to the entire Ontario public, and to do so promptly and willingly, is a matter of regret. It is fair to add, however, that the proportion of the public whose insurance needs have been frustrated is relatively small. The problem is nevertheless serious because of the importance of automobile insurance both to those who seek it and to those who may have to look to it for compensation.

At one time the industry dealt with this problem by means of an Assigned Risk Plan. Under it, high-risk applicants who were refused coverage by the individual companies had their applications assigned to a specific insurer chosen on a rotation basis.

1. *The Combines Investigation Act*, R.S.C., Chapter 10, as amended by *The Combines Investigation Amendment Act (Canada)* 23-24 Elizabeth II (1975) Chapter 76, Section 31.(4).

The Facility was started in 1967 as a successor to the Assigned Risk Plan. Any company in Canada that is a subscriber to the agreement that formed the Facility, and all automobile insurers in Ontario are subscribers, can transfer to the Facility 85 per cent of the risk on any policy for which it feels the risk is greater than warranted by the premium. If a claim arises on this policy the company can claim 85 per cent of the loss from the Facility. At the end of each month the Facility allocates all its premiums earned and all its claims costs to all the insurers in the province in proportion to the premiums each writes. Thus the largest part, 85 per cent, of these substandard risks, is shared on a proportionate basis by all companies in the province.

While, as noted, most companies have underwriting guides for their agents and sales representatives to use as an aid in identifying substandard risks, not all such risks that are accepted by a company are transferred to the Facility. Even when such risks are transferred, the policy is, in most cases, written at the normal rates the company uses for the business involved i.e. if the risk on a physically impaired driver is transferred to the Facility there is no effect on the rate the driver must pay. There is one exception to the application of normal manual rates on business that is transferred to the Facility. This occurs in the case of drivers with poor accident or driving conviction records where surcharges from 25 per cent to 100 per cent of the normal annual rates are made, mainly for convictions under statutes governing highway traffic and the Criminal Code of Canada. These surcharges can accumulate to a maximum surcharge of 100 per cent for drivers under 30 and 200 per cent for other drivers.

The existence of the Facility does not guarantee that the residual market will be served, since no company is anxious to write more than what it believes is its fair share of substandard risks. There are built-in disincentives for an insurer to accept substandard risks since it must retain 15 per cent of the exposure for its own account and the compensation paid by the Facility for the expenses of writing the policy is considered by most to be insufficient to cover the actual costs. As a result, most companies are reluctant to write an excessive number of policies in the substandard market.

The Facility maintains records of the claims experience on the business transferred to it and develops loss ratios by the reasons for the transfer.

It is the Committee's understanding that many in the industry consider that the Facility is an inadequate solution to the problem of closing the gap in the availability of insurance facilities.

A summary of the Facility's claims experience for the years ended December 31, 1971-1974 is as follows:

Reason for Transfer	Loss Ratios ² for the Year Ended December 31			
	1971	1972	1973	1974
Under age 21 — licensed				
one year or more	.83	.89	.87	1.14
“Morals”	1.16	1.13	1.40	1.38
Liquor or drugs	1.24	1.11	1.06	1.30
Sports Car	.94	1.03	1.10	1.36
Condition of auto	.88	.82	.79	.97
Licensed less than one year —				
all ages	.95	1.01	1.09	1.30
Physical impairment	.79	.84	1.06	1.08
Conviction or accident record ³	.82	.87	.86	.94
Age over 70	.72	.82	.84	.95
Not stated	1.05	.92	1.04	1.03
All policies transferred				
to the Facility	.90	.93	.96	1.10
For comparison, “Green Book”				
country-wide experience was	.73	.80	.80	.85

During its deliberations the Committee determined that the principal reason the residual market exists is that premiums are calculated on the experience of broad categories of drivers. Premium rates are based on the average of a category. Each category includes some drivers who are atypical of the rest of the group. Insurers are anxious to insure the better drivers in each category and leave the below average drivers for someone else. The residual market, consisting of “high-risk” drivers, is the result.

There are alternative means of handling the insurance requirements of the drivers in the residual market. Comments on some of these alternatives are set out below under three headings:

1. Marketing: outlining alternatives for an insured (or his agent) to have an insurer accept a risk.
2. Underwriting: setting out alternatives for risk retention by insurers.
3. Rating: dealing with alternatives for changing premiums.

MARKETING

There are four alternatives in the marketing of insurance to the residual market:

2. “Loss ratio” means the ratio of total claims costs to net premiums. “Total claims costs” include allowances for adjusting costs in the amount of 11 per cent of net claims costs.
3. The calculation of loss ratios in conviction or accident record cases includes a full allowance for Facility surcharges that have been added to the premiums of policyholders.

- (a) free risk selection,
- (b) take all comers,
- (c) exchange/assignment, and
- (d) joint underwriting association.

(a) *Free Risk Selection*: The first alternative, “free risk selection”, is, in effect, the present system in Ontario. A vehicle owner or an insurance agent is compelled to continue to contact different companies until one will accept his business. If an agent, on behalf of a motorist, runs out of companies to which he has access, the vehicle owner is left to find a new agent or contact an insurance company himself.

(b) *Take All Comers*: With a “take all comers” approach, each company would be required (either by legislation or through industry ruling) to accept each driver that applies to it for insurance. Although the present system in the province is basically a free risk selection system, it tends towards the “take all comers” approach with many companies, fearing media, political or other pressure, accepting a risk if a driver indicates he is experiencing difficulty in obtaining coverage.

(c) *Exchange/Assignment*: A third alternative is an agency (often called an Exchange), whose function is to allocate to insurers, on a cyclical basis, the coverage of each person who contacts it. With this system, anyone who is experiencing difficulty in obtaining insurance can contact the Exchange directly or through his agent, and be assigned to a company. These assignments would be proportioned to each company based on the share of the total insurance each writes in the province. The Assigned Risk Plan which operated in Ontario until 1967 functioned in this way.

Some relevant comments concerning each alternative follow:

	100% Retention	Part Pooling Part Retention	100% Pooling
Is the company encouraged to accept all applications for insurance?	no	no	yes
Is the possibility of a small company getting a risk larger than it can safely handle avoided?	no	no	yes
Is the necessity of setting up administration procedures with their related costs avoided?	yes	no	no

(d) *Joint Underwriting Association*: With a plan such as a joint underwriting association, several companies become carriers for the residual market and each agent selects one of these companies to write his residual business. The agent then sends to this company the business he has difficulty placing through regular channels.

Summary

A summary of certain characteristics of each of these alternatives follows:

	Free Risk Selection	Take-All Comers	Exchange/ Assignment	Joint Underwriting Association
Is market availability guaranteed?	no	yes	yes	yes
Can an individual obtain insurance without going to an agent?	yes	yes	yes	no
Is the agent dealing with the same company regularly?	yes	yes	no	yes
Is each company likely to get enough of this business to ensure economies of scale?	no	no	no	yes

UNDERWRITING (*Risk Retention by the Insurer*)

There are three basic underwriting alternatives for the industry in handling the residual market. At one extreme, it is possible to set up a system whereby each company must retain for its own account all the business it writes. At the other extreme, arrangements would be made whereby a company could arrange to pool 100 per cent of the risk on any business it did not wish to retain with the net cost of the transferred business allocated to each company based on its share of the total writings in the Province or on some other basis. Between these two extremes is a whole range of possibilities with a portion of the risk pooled and the balance retained by the company. The present Facility is an example of such a system with its 85 per cent pooling (in most cases) and 15 per cent retention.

RATING

The problem of rating of the residual market hinges on the question of whether this segment of the market should be self sufficient or subsidized in part by the vast majority of drivers who, the companies have decided, possibly arbitrarily, are better risks and therefore less expensive to the industry. With one exception (drivers with poor accident or driving conviction records), there are presently no surcharges added to the normal premiums for policyholders in the Ontario residual market. If it is decided that the residual market should be rated separately, it would be necessary to gather experience statistics on this group and establish rates based on these data. If a separate rating is developed, each company would have its regular rate manual for the majority of the policyholders and a separate manual for the residual market.

Summary	No separate rating	Separate rating
Is each segment of the total driver population largely self sufficient?	no	yes
Is the necessity of setting-up a separate rating procedure with its related costs avoided?	yes	no

CHAPTER 14

Recommendations About Premiums, Ratemaking And Underwriting

The three preceding chapters of this Report were devoted to a description of the process of ratemaking, underwriting, risk selection and the handling of the residual market.

The following are the Committee's recommendations relating to those processes:

Recommendations

1. The Committee has made a careful study of the process of rate making and underwriting. It has concluded that it would not be realistic to expect that the existing levels of premiums could be reduced below their present level, particularly taking into consideration the inevitable costs of the claims that will continue to be made against the automobile insurance system and also considering the general inflationary trend in our society. It should nevertheless be possible to stabilize or minimize the increase in premiums. It should also be possible to make the calculation of premiums as fair as it possibly can be.

2. The Committee has examined the classification system by which the industry determines the various driver classes for the purpose of fixing the premium rate for each class. The Committee's initial reaction was that this classification system was quite arbitrary. However, on much further consideration, the Committee has reached the tentative view that many aspects of the classification system are justifiable on entirely objective grounds. There are nevertheless sufficient aspects of the classification system about which the Committee still has grave doubts, to justify further reasearch. The Committee has therefore directed that its staff join with the Superintendent and the industry to investigate further and to recommend a classification system that is entirely objective and actuarially sound. The Committee then intends that such a classification system be adopted as mandatory for all automobile insurers in the province.

3. One of the Committee's areas of doubt concerns the present system of rating territories and the Committee will expect that this topic will be reviewed with special care.

4. The Committee is also particularly concerned about present policies as to the high rates applicable to the under 25 age group. Even if

further investigation indicates that the current high rates applicable to them are actuarially justified, the Committee nevertheless will consider recommending reduction of such rates so that they will not be prohibitive.

5. The principal criterion for a proposed new classification system will be its complete objectivity. It is the Committee's intention that the present underwriting practice of taking various subjective factors into consideration in deciding whether to write a policy should be abolished. An applicant should then be judged on the basis only of the authorized criteria and he will be entitled to have his premium calculated accordingly and to be insured upon payment of that premium.

6. The Committee has been concerned about the policy of surcharging because of driver offense records. Its views are as follows:

- (a) To date, no satisfactory objective proof has been produced to indicate that a direct correlation exists between driver offenses and accident proneness and the Committee invites submissions from those who believe that these factors are correlated.
- (b) Until such a direct relationship is proved, the industry should be prohibited from obtaining driver offense records and from using driver offense information for the purpose of surcharging policyholders.
- (c) The Committee recommends that immediate studies be instituted on this subject and that any relevant statistics from the Ministry of Transportation and Communications be made available, without identifying the specific individuals to whom such statistics relate.
- (d) The Committee's concern is that accident proneness is already predictable on the basis of driver *accident* records and this appears to be actuarially conclusive. By purporting to predict accident proneness on the additional basis of driver *offense* records, it would appear that the industry is placing drivers in a position of "double jeopardy".
- (e) The Committee's principal concern in this context is the present practice of surcharging the ordinary driver who happens to have some modicum of offenses, as contrasted with the driver who is such a chronic offender that he is an obvious menace on the road.¹ The problem created by the latter type of driver is dealt with in Chapter 20 which deals with Driver Review Boards.
- (f) If at a later date, sufficient proof is provided to satisfy the Committee that such a correlation exists so as to warrant surcharging, such surcharging should be permitted only on the basis of a scale approved by the Superintendent and also on the basis that the driving records of *all* policyholders be examined and assessed for this purpose.

1. See Appendix 6 for examples.

7. The Committee was initially concerned about the large number of classes in the present classification system and felt that it would be wise to reduce the number of such classes for the sake of simplicity. After further deliberation, however, the Committee has concluded that the provision of an adequate number of properly devised classes within the classification system is essential. In the first place, it ensures that each driver is fairly classified with other drivers posing substantially the same risk to the insurance system. In the second place, the problem of "risk selection" or "creaming" is minimized if there are as many proper classes as is administratively practical. The Committee has therefore tentatively reached a view that an appropriate classification system should have sufficient diversity of classes to accomplish the objectives set out above. At the same time, it is important that the method of classifying a policyholder should be as clear and understandable as circumstances permit.

8. The Committee has been gravely concerned about the inadequacy of the present Facility to provide for the high risk driver and the residual market generally. To date the Committee has not developed a solution to this problem that can practically be imposed upon the industry. However, in view of the Committee's recommendation that third party liability insurance be compulsory, it is essential that the residual market be serviced by the industry. The Committee therefore wishes to state in the most categorical terms that it considers that the resolution of this problem is the responsibility of the industry and that it will expect the industry to submit a practical solution to the problem during the course of the Committee's forthcoming sittings.

9. The Committee wishes to reiterate what it has said in Chapter 27 about the relevance of investment income to the evaluation of the industry's performance and to stress that it expects the industry to achieve realistic investment yields. The Committee also wishes to make it clear that it holds tentative views that the funds held by the industry from the public ought to be subject to some degree of direction as to the method in which they are to be invested, particularly so as to accomplish socio-economic objectives that are generally considered important within the community. The Committee believes that this can be done without in any way impinging upon solvency and liquidity rules.

10. With respect to accident free bonuses the Committee is convinced that claims costs would be further reduced if policyholders who are involved in motor accidents were encouraged in cases involving minor damage to pay their own losses as well as the claims made by others to whom they have caused damage. This can be accomplished by a much more effective use of the accident free bonus system. The workings of this system were very apparent to the Committee during the course of its investigations in the United Kingdom. There, the accident free bonus

was constantly mentioned to Committee members by insured drivers, and a driver's accident free bonus repeatedly appeared to be a matter of importance and a source of pride to the driver. It is true, of course, that under the rating system prevailing in Ontario, certain advantages accrue to policyholders who continue to be accident free year after year up to five years.

However, the publicity given by the industry to this advantage appears to be quite inadequate. It is the Committee's conviction that very real savings could be effected in claims costs if far more advertising and publicity were focused on a clearly understandable accident free bonus system. Indeed, this topic should be in the very foreground of the industry's advertising program and should be the most visible feature of application or invoice forms. In the first place it should result in a greater degree of care on the part of insured drivers. Secondly, and more significant, it should also result in insured drivers being prepared to settle minor losses themselves rather than reporting them to their insurers and leaving it to the insurers to absorb such losses. Under a realistic, thoroughly publicized accident free bonus system, it would be obvious to insured drivers that it is more economical to settle minor losses oneself rather than to suffer the loss of the accident free bonus.

Under the present system, the failure to report an accident may be tantamount to a misrepresentation to the insurer and it will therefore be necessary to amend the terms of the application form and to make other corresponding changes in the law so that a driver who settles his own claims in the manner described would not suffer from an increased premium or from the threat of premium increases, policy cancellation or any similar response on the part of the insurer.

It has been suggested that the failure to report "self-adjusted" accidents might distort statistical records and driver classification procedures. The Committee is convinced, however, that the advantages that will accrue from the effective adoption of the accident free bonus system will far outweigh any disadvantages.

More specifically, **the Committee recommends** the establishment of an accident free bonus system which will have the following characteristics:

- (a) After five years with an accident free record, an insured will be entitled to his maximum accident free bonus and the insurer will state on the face of every renewal certificate in capital letters and red ink the base premium, the total deduction by reason of the accident free bonus and the net premium payable.
- (b) In the event of an insured entitled to such maximum benefit having a claim made against his insurer, he will lose one-third of his accident free bonus in that year.

- (c) He will be entitled to regain the penalty loss if he has another accident free year.
- (d) All policyholders will be encouraged to adjust at their own expense minor property damage accidents and shall not be penalized by their insurers if they fully pay such costs themselves.

11. With respect to investment income, the investment policies followed by general insurance companies are conservative and ultra-cautious. These policies have been designed to stay well within investment requirements or guidelines laid down by provincial and federal regulatory authorities who are mainly interested in the solvency and liquidity of the companies. The companies have shown an excess of zeal in staying well within these guidelines and they point, perhaps with some justification, to the Superintendent's conservatism in administering the solvency and liquidity rules. In doing so, however, the industry appears to have overlooked many legitimate opportunities of achieving more adequate yields on investments. In the course of the Committee's hearings, the explanation that was repeatedly offered was that in past years the companies had acquired many long term investments at a time when interest rates were must lower than they have been in more recent years. However, in examining the yields achieved in more recent years, when interest rates have been running at higher levels, the results achieved continue to be unimpressive. The surprising indifference that the company representatives repeatedly displayed to this problem was well exemplified in the opinions that they asserted to the Committee as to the desirability of investing in prime residential first mortgages. At the time when they were testifying before the Committee, interest rates on prime mortgages (an investment permitted them by law) were running at 11³/₄ per cent. And yet the consensus amongst the companies' representatives was that they did not propose to invest funds in such mortgages. The reason that they assigned was that mortgages were not sufficiently liquid, hardly an acceptable explanation when the companies' liquidity ratios were manifestly far more than adequate to service any reasonable needs. In any event, the Committee is convinced that mortgages are sufficiently liquid to satisfy the needs of the industry.

The Committee views these minimal investment returns with concern, particularly in view of the fact that much of the money available for investment consists of premiums paid by the public in advance. The Committee recognizes quite clearly the importance of adequate solvency and liquidity and indeed these requirements are almost too obvious to require mention in this context. The Committee's point is that these funds could be invested much more profitably without bringing solvency and liquidity requirements into any jeopardy. As the Committee has repeatedly indicated, the industry's yield from investments has a direct bearing on the premiums that it must charge and the Committee expects

the industry to succeed in obtaining substantially higher yields in the future. The industry should be aware that its hopes of minimal governmental intervention will best be served by a more effective investment policy.

In February 1977, about six months after the Committee expressed firm and well-publicized views about the industry's failure to avail itself of high first mortgage yields, the Committee had an opportunity of discussing this topic further with representatives of the Gore Mutual Insurance Company, the Waterloo Mutual Insurance Company and the Economical Mutual Insurance Company, all of Kitchener, Ontario. The Committee was pleased to find that its public comments had resulted in a favourable response and that approximately \$12 million had been invested in first mortgages by these companies in recent months. It was also apparent that these companies had enthusiastically adopted the Committee's recommendations in this regard and that investment yields had increased accordingly.

12. With respect to rate regulation, the Committee is not prepared at this stage in its deliberations to recommend governmental rate regulation. However, last year's debate between representatives of the industry and of the Superintendent's office has drawn attention to the matter and the Committee intends to consider the question during the course of the current year.

PART IV — CLAIMS

CHAPTER 15

Adjusters and Adjusting

Preceding Parts of this Report described the motor vehicle system and the role of automobile insurance in servicing that system. The Report then reviewed the coverage provided by the Standard Automobile Policy and recommended changes in that coverage. The third Part dealt with the cost of insurance as reflected in the premium that policyholders must pay and it also dealt with the problem of making sure that coverage is available to all licensed drivers. This Part is concerned with the opposite end of the automobile insurance system: how claims should be handled.

In the policy year 1975 the total private passenger claims costs of the automobile insurance industry in Ontario amounted to \$446,548,000 and they arose out of some 614,644 claims. These figures give some idea of the magnitude of the task of effecting settlements satisfactorily. Some further idea of the problem is obtained from examining a breakdown of these figures into bodily injury claims and property damage claims. There were some 65,569 bodily injury claims involving an estimated total of \$168,016,000, — an average of \$2,562 each. Property damage claims numbered 549,075 and involved \$278,532,000, — an average of \$507 each. The enormity of the problem of claims adjusting is obvious and so it is not surprising that the Committee found that the claims adjusting process was a source of complaint from the public.

The immense task of claims adjustment is handled by the industry in Ontario through adjusters who represent the insurers. Adjusters are of two types. “Independent” adjusters constitute a network of operators who are spread across the province in adjusting offices that are operated as individual proprietorships or partnerships or as incorporated companies. Each independent adjusting agency carries on its operations independently of the insurance companies in the sense that it tends to be retained on a case-by-case basis; it runs its office independently from its clients and it is compensated on a case-by-case basis. It is important to add, however, that so called “independent” adjusters are nevertheless entirely dependent on the insurers for their compensation and for continued business. They are certainly not independent in the sense of being able to act apart from their insurers’ interests. And clearly they are prohibited by law from acting on behalf of claimants in connection with automobile claims.

By way of contrast, "salaried" adjusters are full-time employees of insurance companies, employed by them to carry out the adjustment process for them. They are normally organized into claims departments that operate entirely within the organizational structure of the company. The tendency is for the salaried adjusters system to be adopted by the larger companies and in densely populated areas where it is practical for the company to take full advantage of any economies of scale that may be inherent in the system. On the other hand, independent adjusters are utilized by companies that are too small to justify the maintenance of their own claims departments, or where claims are to be settled beyond the convenient reach of salaried adjusters.

The records of the Superintendent's office indicate that there were 1,141 independent adjusters in Ontario as at November 3, 1976. The number of salaried adjusters within the province is not known. Adjusters are organized into two principal associations: The Canadian Independent Adjusters' Conference represents approximately 350 independent adjusters in Ontario and carries on an active programme of representing the interests of its membership and in the presentation of extensive continuing education programmes. The Ontario Insurance Adjusters Association represents about 1,350 adjusters, both independent and salaried, and it carries on a programme similar to that of the Conference.

Independent adjusters are regulated by the Superintendent through a licensing system that prohibits any unlicensed person from acting as an adjuster and that authorizes the Superintendent to grant, renew, suspend or cancel an adjuster's licence.¹ In practice, the granting of a licence to an independent adjuster is subject to the completion of a course of apprenticeship. Initially an applicant receives a Letter of Authority permitting him to investigate and assist in the adjusting of losses under the direct supervision of a licensed adjuster. After one year, the trainee sits an examination conducted by his Association under the aegis of the Registrar of Agents, Brokers and Adjusters, who is an officer in the Superintendent's office. Success at this examination leads to the trainee's receiving a Probationary Licence. He then continues to work under direct supervision for a further year, whereupon he faces a second examination. After passing this examination the applicant receives a full licence unless his training has been in some limited field. In that case he may receive a Qualified Licence, limited to that particular field.

In addition to supervising the training and examination of applicants for independent adjusters' licences, the office of the Superintendent also exercises a general supervisory jurisdiction over the manner in which independent adjusters carry on their work.

1. *The Act*, Section 350(1)

The licensing and supervisory powers of the Superintendent apply only to independent adjusters.² Salaried adjusters are not subject to any licensing power. The rationale for this difference in treatment appears to be that the full-time employee is entirely the responsibility of the company that employs him, so that if the company fails to see that his conduct meets acceptable standards, the company will be responsible for the consequences. One possible consequence is said to be that a company that condones irregularities on the part of its employees may find that its licence as an insurer is in jeopardy.

The claims costs that have been referred to at the opening of this chapter include both the estimated amount that will be paid to claimants and also the adjusting costs incurred in the course of settling those claims. A breakdown of these combined costs indicates the total adjusting costs in Ontario in connection with 1975 accidents to be almost \$64,000,000. This amounts to about 14 per cent of the net claims costs. The importance of efficient claims handling is self-evident.

The Committee has heard from representatives of the office of the Superintendent about complaints received that are attributable to the adjusting process. In addition, complaints on the same topic have been received by the Committee both in the course of formal public hearings and in informal discussions with Committee members' constituents and others. The areas of complaint that relate to adjusting can be classified as follows:

- (a) Delays of the insurers or of the adjusters representing them in responding to claims;
- (b) Unjustified denials of liability on the part of insurers or their representatives;
- (c) Disputes over the quantum of damages received by claimants;
- (d) More specifically, disputes over quantum of damages in cases where the insurers' representatives assert a right to deduct some allowance for depreciation or wear of the crash parts that are to be repaired or replaced; and
- (e) Delays in making payment after a settlement agreement has been reached.

2. Section 350 of the Act authorizes the Superintendent to issue licences to adjusters and prohibits anyone from acting as an adjuster without such a licence. However, Section 1.4 defines the term "adjuster" so that it excludes "a salaried employee of a licensed insurer while acting on behalf of such insurer in the adjustment of losses". As a result, the licensing power simply does not extend to salaried employees because of the way in which the Act is currently framed. In this Report, the terms "independent adjuster" and, in contrast, "salaried adjuster" have been used with the intention of providing greater clarity.

Recommendations

The Committee has discussed at great length the problems of adjusting and the complaints that have been received by the Superintendent's Office with regard to the adjusting process. It has also heard representations in detail from the representatives of the Superintendent's Office, from the adjusters themselves and from members of the public with regard to adjusting problems. As a result it makes the recommendations set out below. A dissenting opinion is set out at the end of this chapter.

1. The Committee first addressed itself to the way in which claims adjusters are designated. It is quite clear to the Committee, as has already been indicated, that self-employed adjusters cannot be considered as being "independent" of the insurance companies who retain them and the Committee is concerned that members of the public may be misled into supposing that adjusters exercise a function similar to that of arbitrators or judges who make independent decisions relating to the claims with which they deal. It must be acknowledged that since self-employed adjusters normally reside in the municipality in which they work, at some distance from the offices of the companies that employ them, there may be some opportunity for some degree of objectivity. It may also be true that in outlying municipalities a relationship may exist between the local adjuster and the local insurance agent that may encourage the adjuster to exercise some degree of independence of judgment.

The important factor, however, is that the adjuster is entirely dependent upon the insurance companies who retain him on a case-by-case basis for his livelihood and his loyalty is primarily to his company. The Committee had before it a code of ethics for "independent" adjusters and it categorically stated that the adjuster's first loyalty must be to his insurance company.

In these circumstances **the Committee recommends** that the Act be amended where necessary so as to prohibit the use of the term "independent" as a description of adjusters.

2. The Committee has also discussed the present system of licensing adjusters, with its system of examinations and supervisory activities currently carried out by the Superintendent's Office. The Committee noted particularly that it was only the self-employed adjusters who were licensed and that salaried adjusters were entirely free of the jurisdiction of the licensing system. It was also apparent that current trends are very much toward the increase in the use of salaried adjusters and it is reasonable to anticipate that this process will continue, particularly as the population of Ontario increases in density.

It is the Committee's opinion that the way in which an adjuster is remunerated,—either on a salaried basis or on a case-by-case basis,—is

entirely irrelevant to the question of the advisability of maintaining a licensing system. The Committee considers that the insurance company on whose behalf an adjuster operates should be entirely responsible for his conduct and the Committee noted that the Superintendent has power to deal directly with the companies regarding complaints about their adjusters.

The Committee has concluded that it should be sufficient that the Superintendent be able to exercise his normal supervisory authority over the companies who employ or retain adjusters. **The Committee therefore recommends** that the conduct of adjusters should be regulated in this way rather than through the current complex system of licensing one segment of the adjusting profession.

3. The Committee has examined the provisions of Part XVIII of the Insurance Act dealing with unfair and deceptive acts and practices in the business of insurance. Under Section 388 a list of nine such acts or practices is set out, ending with “any consistent practice or conduct that results in unreasonable delay or resistance to the fair adjustment and settlement of claims”. Section 389 provides that no person shall engage in any unfair or deceptive act or practice in the business of insurance. Sections 390 and 391 authorize the Superintendent to examine and investigate the affairs of every person engaged in the business of insurance in Ontario in order to determine whether such person has been or is engaged in any unfair or deceptive act or practice. Where it appears to the Superintendent that a person is engaging therein, he may order the person to cease engaging in his business or in any part thereof that is named. Provision is made for the holding of a hearing by the Superintendent and for temporary orders pending the outcome of the hearing. Any person contravening such an order is guilty of an offence and may be subject to the other various sanctions, such as licence suspension, that are available to the Superintendent.

The Committee recommends that section 388 be amended. Instead of containing a specific list of improper acts and practices, it should authorize the making of regulations by the Lieutenant-Governor-in-Council, defining unfair acts and practices in the business of insurance including without limitation, acts and practices related in the process of claims adjustment. The Superintendent of Insurance should then assume the leadership in evolving a Code of Conduct in such fields as claims adjustment.

Violation of such a Code of Conduct could then be dealt with through the making of a Superintendent’s order.³ Alternatively, Section 392 of the Act should be amended to provide for proceedings to be taken

3. The Committee has objections to the Superintendent’s apparent role under Section 388 as regulator, prosecutor and adjudicator and these are dealt with in Chapter 27, q.v.

involving maximum penalties of \$1,000, \$5,000 and \$10,000 for first, second and third convictions respectively. Thirdly, the proposed Code of Conduct should be enforceable by the use of the other sanctions that are available to the Superintendent, such as the suspension of a company's licence.

4. The Committee has had an opportunity of examining and considering a claim chart containing twelve diagrams. Each diagram showed the relative positions of the cars involved in a typical accident case and indicated in a relatively arbitrary manner the degree of fault that was to be assigned to each. While these charts may be helpful guidelines in the course of determining the way in which insurance companies should share in paying a loss, it is important to keep in mind that the charts are nothing more than guidelines and must not be used in any way in the courts in proceedings involving motor accidents. They should be used only in inter-company settlements of collision claims. **The Committee recommends** that the name be changed from "driver fault chart" to "collision assessment chart" in the hope that this change of name will emphasize the limited use to which they should be put.

The Committee is aware that the Superintendent's Office is very conscious of the potential abuses to which these charts can be put in the course of negotiating with third parties and the Superintendent states that the use of the charts is being carefully monitored. The Committee applauds this policy because it considers it important that these charts be used with care and only in the limited circumstances indicated above.

5. The Committee has been informed that problems have arisen in the past in connection with the use of adjusters who do not reside in Canada and who are retained to come into the country on an ad hoc basis for the purpose of adjusting individual claims. The difficulty that has been created by this process is that such adjusters tend to be beyond the supervision and control of the Office of the Superintendent. Accordingly **the Committee recommends** that the Act be amended to provide that no insurance company shall engage a foreign adjuster to handle a claim in Ontario without the consent of the Superintendent. Furthermore, in order to enable control to be exercised over incorporated companies that are involved in the business of adjusting, **the Committee recommends** that the Act should be amended to prohibit corporations from acting as adjusters if they are controlled by non-residents of Canada. Detailed provision prohibiting the licensing of such corporations are already set out in Section 353 and they can be readily adapted to the case of a total ban on acting as adjusters.

DISSENTING OPINION OF:

James E. Bullbrook, Q.C., M.P.P.,
James R. Breithaupt, Q.C., M.P.P.,
John Ferris, M.P.P.,
James Renwick, Q.C., M.P.P.,
Marvin Shore, F.C.A., M.P.P.,
Gordon E. Smith, M.P.P.

We do not concur with the opinion of the majority of the members of the Committee with respect to Recommendations 1 and 2 set out above.

One of the vital elements in an effective automobile insurance system is a fair, prompt and efficient method of handling claims. Over past years a network of claims adjusters has developed across the province to carry out this function. At the present time there is a new trend in existence which leads in the direction of the replacement of this network with salaried claims personnel on the staffs of the companies. This trend should be viewed with regret and concern because the more traditional network of independent adjusters has given the province a fairer means of settling claims than is likely to be provided by employed company personnel.

Independent adjusters have become established businessmen in the various municipalities of Ontario. By and large they have conducted their operations fairly. It is true that they are dependent upon the insurance companies for their livelihood and that they owe a duty of loyalty to the companies for whom they act. However, experience has shown that despite those facts they have nevertheless tended to exercise some degree of independence and fairness in negotiating claims settlements. Indeed it is not uncommon that the choice of an adjuster in a locality is largely influenced by the recommendations of the local insurance agents. And since any excessive severity on the part of the adjuster may result in ill-will for the local agents, there is some safeguard inherent in the system which promotes some degree of independence and fairness on the part of the adjusters.

Certainly the degree of independence that adjusters can bring to their work is significantly greater than that which is possible for salaried claims personnel and for this reason the system of independent adjusters ought to be strengthened rather than being weakened.

There may be some danger that the use of the term "independent" by adjusters may be misleading to some members of the public but the danger is slight because the public is, by and large, aware that the

adjuster is retained by the company and not by the claimant. On the other hand there is a real advantage in retaining the term "Independent Adjuster" because it gives legislative force to the idea that the adjuster should be expected to bring an element of fairness and independence to his work. This should be encouraged and we should not settle for a system under which the person who negotiates settlements is under the immediate and exclusive control of one employer.

It is not enough, however, to emphasize the name "Independent Adjuster." Concrete steps should be taken to implement the basic ideal that adjusting should be a constructive and judicious process rather than an adversary proceeding. There should therefore be an obligation imposed upon adjusters and others involved in claims settlements to make full and complete disclosure of all relevant information with the possible exception of the actual amount of the claim reserve set up by the company for accounting purposes.

It is also important to the encouragement of the best in claims settlement procedures that the licensing system that now exists be continued. It ensures that the present training system for independent adjusters, which is quite thorough, is continued. It also helps to ensure that adjusters comply with high standards of professional conduct, particularly in situations where unlicensed personnel might be more prone to act more in the interest of their employers.

But the licensing system is more than just a method of enforcing legally recognized adjusting standards by reason of the threat of suspension that is implicit in it. The licensing system provides the licensed adjuster with a sense of responsibility, of status and of professionalism in his work. And in giving him these advantages it tends to encourage him to act honourably and fairly in his daily work.

In short, claims settlements should be conducted in an atmosphere of fairness and conciliation and not in an atmosphere of antagonism or competitiveness. The present network of independent adjusters should be supported as the best method of achieving this ideal. The present licensing system and the proposed system of full disclosure promote this objective.

CHAPTER 16

Appraisal Centres

Property damage claims and the cost of adjusting them constitute a very substantial part of the total claims costs of the automobile insurance system as has been indicated in the preceding chapter. The apparent private passenger claims incurred by the industry in the 1975 policy year amounted to \$446,548,000 and of this amount about \$278,532,000 or 62 per cent was made up of property damage claims, the vast bulk of which covered vehicle repair costs. These figures also include the costs of adjusting claims. More significant in terms of administration, about 90 per cent of the *number* of claims related to property damage.

It is obvious then that two major ways of reducing insurance costs and therefore premiums, are to reduce the cost of vehicle repairs and the cost of adjusting repair claims.

Several problems exist that add to these costs: There is the temptation for claimants to include in their repair claims the cost of repairing damage that was not done in the accident. There is also the temptation on the part of garage operators to increase the prices charged if they are aware that the repairs are to be paid for by an insurer. Again there is a tendency for repair operators to find numerous "additional" during the course of the repair so that the cost is inflated. There is also the temptation to include new parts, where the mark-up may be greater, when used parts would be quite adequate. It is not suggested that these practices are in any way universal but the Committee's consultants found during the course of their investigations that these abuses happen with sufficient frequency to have a significant effect upon claims costs.

The problem of adjustment costs in connection with vehicle repairs is also a matter of concern. A large proportion of repair claims involve relatively small amounts of money and, whereas the costs of adjusting accidents are substantial, they do not decrease proportionately as claims decrease in amount. As a result insurers have tried to reduce their adjusting costs by minimizing the time spent on the adjusting process. In the short term this is often a fruitful way of saving, and therefore many insurers have established telephone adjusting systems whereby claimants are encouraged to make their claims by telephone so that they can be settled at once. While in the short term this system undoubtedly reduces adjusting costs, it will in the long term increase repair costs because the abuses that have been described above inevitably increase when there is no monitoring of repair costs.

In these circumstances it has become vitally important that some major step be taken to control repair costs while, at the same time, keeping adjustment costs to a minimum.

In order to accomplish this, the Insurance Bureau of Canada has recently established a Drive-In Appraisal Centre at Kitchener, Ontario, as a pilot project. This Centre is operated by a firm of adjusters, L. S. Croth Co. Limited, on the basis of a franchise from the IBC. The Committee had the opportunity of examining the Centre thoroughly and of discussing its operation with senior representatives of the adjusters and of the IBC's Claims Committee.

The Centre is located on a site that is central to the Kitchener, Waterloo and Cambridge regions, which are its primary service area, although claimants are referred to it from as far away as Goderich and Brampton. The Centre consists of a one-storey building containing indoor areas where automobiles can be driven in or brought in by tow truck. There is also ample private space for adjusters to conduct interviews. There is also adequate office space for the proprietor's adjusting business and office space available for other adjusters to use on a lease basis.

In practice a policyholder who has been involved in an accident will contact his agent or his insurer. The agent or insurer will then advise the policyholder or claimant to wait fifteen minutes and then call the Drive-In Centre. During this period the Centre is advised to accept the call and is instructed to appraise the repair costs. At the same time the adjuster is contacted if there is any necessity for him to investigate the accident.

When the telephone call is received from the claimant or the policyholder an appointment is made to have the vehicle brought in, or towed in, just as quickly as can be arranged. Normally this is on a same-day basis because it has been found that the more quickly the appraisal is made, the less likelihood there is of extraneous repairs being added to the claim.

When the automobile arrives at the Centre, qualified appraisers immediately appraise the repairs that are required, setting out the parts that are to be repaired or replaced and the estimated time required for the work. The Centre keeps available constantly updated charts of parts costs, and it also keeps a current list of labour charges made by the various repair shops in the area that the Centre serves. The appraiser is careful not to recommend any specific repair shop to the policyholder or claimant; rather it is left to him to designate the shop which is to do the repair job. An authorization is then issued to that shop for the carrying out of the repair work and undertaking to pay for it. The automobile is then taken to the shop for repair.

The Centre also conducts a system of follow-ups so that approximately ten per cent of the repair jobs are spot checked after the work has been completed. This is done to ensure that the shop has actually done the work in accordance with the repair instructions, and particularly to

ensure that new parts were in fact used as specified. This follow-up system also ensures that any complaints that are made by claimants or policyholders are checked out.

It is noteworthy that the Drive-In Centre is designed to avoid the abuses that were listed at the beginning of this chapter. It is not intended as a means of reducing hourly labour charges, nor does it make any effort to negotiate the reduction of new crash part costs. It does however make some effort to keep track of local sources of useable second-hand parts so that the appraisers will know where to refer repair shops when they designate that second-hand parts should be used.

The cost per appraisal that is charged to the insurer depends on the cost of the repair job and currently it operates on the following sliding scale:

<i>Average Repair Cost</i>	<i>Fee</i>
up to \$ 100	\$15.00 (no photo)
\$ 101 to 250	20.00
251 to 500	23.50
501 to 750	25.50
751 to 1,000	27.50
1,001 to 1,250	30.50
1,251 to 1,500	32.50
1,501 and up	35.50

The average repair cost in 1976 was \$472 and the average fee was \$23.50, which is less than 5 per cent of the average repair cost.

The Committee's consultants found that the Centre is currently operating at a loss but that this is attributed, at least in part, to the unusually high advertising budget that was necessary in the course of launching the project. In addition there is a relatively low volume inasmuch as approximately 2,800 vehicles were appraised in the first eight months of operation despite the fact that the projected capacity for the same period was 4,000 vehicles. It would seem reasonable to presume that these operating losses may be temporary and are associated with the fact that the operation is still in an experimental stage.

There are a number of significant benefits in the Drive-In Centre concept:

1. Repair shops prefer this system since it eliminates the need for them to provide estimates.
2. The potential for estimate abuse is reduced considerably. In the traditional system, with minor repairs some appraisers sometimes neglected to inspect the damage but merely copied the garage estimate instead.

3. Drive-In Centres meet overload requirements when company appraisers are not available.

4. In the areas where it is uneconomical for an insurance company to have staff appraisers, quality is monitored by the Drive-In Centre at a reasonable cost.

5. Garages receive payment faster by dealing directly with the insurance companies on the authorization of the Drive-In Centres.

6. Customers save the time that would otherwise be involved when a company demands competitive estimates.

7. The Committee is convinced from its investigations that the Drive-In concept is an effective method of controlling repair costs and of minimizing related adjusting costs.

The Committee recommends that every encouragement be given to the development of Drive-In Centres at appropriate locations throughout Ontario as quickly as the circumstances permit, so that the entire automobile insurance system will be able to minimize the immense cost of vehicle repairs and adjustment expenses.

The Committee further recommends that the influence of the Superintendent's Office should be used to ensure that all automobile insurance companies carrying on business in the province assume their fair share of the cost of establishing a system of Drive-In Appraisal Centres. The importance of the development of these Centres is such that necessary legislation should be enacted making it obligatory that all companies bear their share of the cost.

The Committee recommends that it would be advisable for the industry to publicize the benefits to policyholders inherent in the use of Drive-In Centres and to make it clear that they are not being charged for the use of the Drive-In Centres and also that, if they wish to go elsewhere for an appraisal, they are free to do so at their own cost.

CHAPTER 17

Reducing Repair Costs: Automated Appraisal Systems

During the course of the Committee's investigations in Zurich, Switzerland, members of the Committee had an opportunity of attending at the Swiss Reinsurance Company and of learning about the operations of Audatex Holding AG. At the outset it is important to explain the difference between the Thatcham operation that was observed in England and the Audatex system that Committee members examined in Switzerland. The Thatcham Centre is primarily a research centre at which new tools, techniques and parts are developed, as will be explained in the following chapter. By contrast, the Audatex system is not involved with research into improvements in tools, techniques or parts involved in the repair operation. Instead, it is a project for the development of highly efficient methods of calculating repair costs.

The Audatex system begins with a thorough and exhaustive examination of *existing* systems for automobile repairs. It calculates the standard times required for effecting every type of repair on virtually every type of vehicle in use throughout Western Europe. It also compiles a constantly updated record of the cost of parts required in the repairing process. All of this extensive data is then recorded in a central computer bank for subsequent retrieval.

In order to ensure that the data on record can be used properly, Audatex next prepares a chart for every vehicle model that is recorded in its data bank. Each chart shows in "exploded" diagrams all of the parts that go to make up that model of vehicle. Spaces are then provided on the chart so that, during an adjuster's examination of a damaged vehicle, he can mark the parts that require repair or replacement. He can also indicate whether in the circumstances he considers that the repair of the damaged part is feasible or whether its replacement is obviously necessary.

The practical application of the Audatex system requires that an adjuster complete the appropriate chart while he is inspecting a damaged vehicle. The chart is then brought into an adjusting office which subscribes to the Audatex system. The adjusting office then feeds the data marked on the chart into its computer terminal. The terminal then conveys the data to the Audatex centre which is located in Frankfurt, Germany. The central computer thereupon analyzes the information that has been fed to it and replies to the terminal in the adjusting office, which immediately prints out a full analysis as to the repair of the vehicle.

The analysis that is provided sets out the following:

1. The vehicle model, its serial number, the owner's name and address, the adjuster and generally such further information as may be necessary in order to identify the parties who are involved in the matter.

2. A complete list of all of the parts that will be required for the repair operation. In preparing this list, the computer compares the cost of replacement of certain parts where it may be debatable as to the desirability of repairing a part or of replacing it with a new part. The computer then indicates which parts should be repaired and which parts are to be replaced. The price of each replacement part is then given individually, as is the probable cost of repair, where repairing a part appears to be preferable to replacing it.

3. The computer also gives full details as to the labour cost of carrying out the necessary repairs. This cost is set out in terms of the time required and also in terms of the cost of each labour item, based on the prevailing labour rates in the area where the vehicle is located. In calculating labour costs the computer makes full allowance for any duplication in operations that might be necessitated by any specific repair project. For example, a motor accident may have resulted in a tire being blown and also in the wheel rim of the same tire being so damaged as to require replacement. In order to calculate the cost of replacing the blown tire it is, of course, necessary to calculate the time involved in removing and replacing the tire. In order to replace the wheel rim it is similarly necessary to calculate the time required to take the wheel rim off the tire and to substitute a new wheel rim in its place. On the other hand, although both the tire and wheel rim must be replaced, there is only one time cost in removing the tire and replacing it. The computer's calculations as to the cost of the repair job would be distorted if the computer were unable to recognize such a duplication. The computer recognizes the duplication and automatically makes the appropriate adjustment in its time cost calculations, so that the final report given by the computer will be completely accurate.

In addition to providing the service that has been described above, Audatex also offers manuals of parts costs and of individual repair costs. These are provided on micro fiche. These manuals are conveniently packed so that they can be taken on inspection trips by adjusters and in the case of simple accidents they can be examined through a handy viewer that is provided for viewing the micro fiche cards. Used in this way they can enable adjusters and appraisers to work out immediate, on-the-site appraisals in simple accident cases, so as to avoid the expense of a visit to the adjusting office for the purpose of interrogating the computer. The micro fiche cards are continuously up-dated so that the information is never obsolete.

The European experience with the Audatex system has been that since its establishment it has received general acceptance throughout the automobile industry and also throughout the repair industry. In consequence, Audatex appraisals are now virtually universally accepted by insurers and repairers alike in Europe. The time and cost of bargaining over repair charges is reduced to a minimum. Audatex cost estimates are fixed on such a basis that a reasonable profit is assured to the ordinary repair operator and indeed, if the repair operation is efficient, significant improvements can be made in repairers' profits over those that are allowed for by the Audatex system.

Where the Audatex system has been used in Europe the experience has been that it has resulted in a reduction of loss costs on repair claims of between 4 per cent and 6 per cent. It has also resulted in a substantial reduction in car rental charges because the "down time" is reduced when repair charges are calculated and settled so quickly. In addition, there is an increased productivity on the part of the adjuster or appraiser, so that the adjusting costs are also significantly reduced. A further advantage is that the control of repair costs is increased because there is a consequent reduction in "extras" that otherwise might be charged for after the repair job has been completed, including spurious repair work that is sometimes included in the repair charges when there is less control over the entire repair operation.

The information that is currently available to the Committee indicates that some consideration is being given to adopting a version of the Audatex system in Canada and the Committee commends those who are currently considering this project.

In view of its observations, **the Committee recommends** that all necessary encouragement ought to be given to the adoption of an automated appraisal system for use in connection with the adjustment of repair claims in Ontario because the Committee believes that the system has an excellent potential for reducing the burden that appraisal costs impose on the automobile insurance system. The problem of obtaining co-operative effort on such a project, where there are as many companies in the field as there are in Ontario is substantial. It is therefore particularly important that the Superintendent be vigorous in pressing the industry into effective action in this regard.

Since the success of such a system depends on its acceptance by the repair industry and by the unions that carry out the actual work of that industry, **the Committee recommends** that representatives of the industry and of labour be encouraged to participate in the development and operation of the system. Their participation will ensure that the rates on which calculations are based are fair and that time schedules are reasonable and do not take advantage of workers.

The recommendations that have been made in the following chapter with regard to the financing of the cost of an automobile repair research centre are equally applicable to the development and establishment of an automated appraisal system. **The Committee accordingly recommends** that the cost be borne in the manner that is described in the following chapter.

CHAPTER 18

Reducing Repair Costs: The Thatcham Experience

As has been indicated, claims costs in the 1975 policy year in Ontario are estimated at \$446,548,000, of which sum \$278,532,000 related to property damage, substantially all to vehicles. It follows that any substantial reductions that can be effected in automobile repair costs should result in a very significant overall reduction in premium rates.

One of the most interesting projects for the reduction of repair costs that has come to the Committee's attention is that which is currently being conducted by The Motor Insurance Repair Research Centre, operated under the joint auspices of the British Insurance Association and Lloyd's of London. The Centre is operated at Thatcham, Berkshire, England, and is generally designated as "Thatcham".

Thatcham was established in 1969 and at that time it was the first research centre of its kind anywhere in the world. In its relatively short period of operation, Thatcham has undertaken work which has resulted in considerable savings in total United Kingdom repair costs.

The Centre consists of a large plant that is well equipped for carrying out research on motor vehicles and attached to it is a crash yard in which vehicles can be impacted for research purposes.

Because of its prestigious background in the insurance industry, the Centre has succeeded in arranging with automobile manufacturers to provide sample models of most of the vehicles that are generally available in the United Kingdom. On delivery, models are examined thoroughly and motor accidents are artificially created. The Centre then investigates the consequences of the impacts and makes recommendations to the automotive industry as to changes that ought to be made in future models so as to increase the safety factor and to reduce repair costs. In performing this function the Centre is carrying out a function that is supplementary to that already carried out by the manufacturers.

The most significant part of the Centre's activities involves research upon the method by which the damages incurred in accidents can be repaired with the maximum of efficiency and the minimum of cost. This research follows two major channels.

In the first place, the research on repair techniques involves a careful and thorough study of repair processes as they are carried out by mechanics while they are actually operating on the vehicles. As a system of repair is perfected for each vehicle model, the Centre produces a repair guide describing it. By the summer of 1976 the Centre had succeeded in producing a guide for each of some 23 different automobile models being

manufactured or used within the United Kingdom. These guides constitute a sort of "bible" as to the quickest and best way in which repair work can be carried out. The guides also establish standard time schedules indicating the number of man-hours required to carry out each listed repair operation.

The Committee was interested to observe that in establishing time standards, the Centre invariably emphasized efficient methods of carrying out repair work and the time limits that were set out were not those of the fastest worker in the Centre but, in fact, were the times for the slowest worker in the Centre operating with the most effective techniques and the most efficient equipment. In preparing time schedules, the Centre clearly placed a good deal of emphasis upon the input of the mechanics in the plant because those who were operating the Centre were convinced that no system of time standards would work effectively if there were the slightest suspicion on the shop floor that the objective of the Centre was to speed up the rate at which mechanics were to be expected to work. In brief, more effective systems and equipment were the Centre's objectives, rather than more hurried employees.

In the course of developing the most effective systems for carrying out repair jobs, the Centre had found it advisable to extend its research into the field of repair equipment, and this has become its second major field of research. As a result, the Centre has developed a variety of tools and equipment that will make repair work faster and more efficient and less costly. One such development was equipment for butt-welding steel panels, for use in connection with the replacement of part fenders, half sections of door panels and the like.

The Centre has also been successful in developing and bringing into the market a series of crash parts that were as practical as the more traditional crash parts which they replaced while at the same time being very substantially cheaper.

One such crash part was the part-panel for doors. Prior to the creation of the Centre, the practice in the repair industry, where automobile doors were damaged, was simply to replace the entire door, and the cost was obviously substantial. The Centre's first research project involved the development of part-panels that could be used to replace parts of doors rather than incurring the expense of replacing the entire door itself. In order to carry out this innovation it was necessary for the Centre to develop its butt-welding system so that the part-panels could be matched to the undamaged section of the door by a butt-weld, which would be strong, and yet invisible when the repairing job was completed. The end result of the research project was a substantial reduction in the entire cost of door repairs.

It is noteworthy that the benefit of the part-panel project accrued not only to the insurance industry and the driving public; it was also beneficial to the auto repair industry. In the first place, the result of the new system was that repairers no longer found it necessary to carry expensive doors in inventory, so that the cost of maintaining an inventory was substantially reduced when part-panels came into use. In the second place, the Centre was able to provide generous time standards for part-panel replacements and was still able to provide substantial savings to the public. As a result the profit increment on part-panel replacements is generous.

Following the success of the part-panel project the Centre carried out further research on the “re-skinning” of trunk lids, hoods, and tailgates. The following figures illustrate the savings to be derived from the system as a result of the new replacement technique in cases where skins are used in place of tailgates:

<u>Model</u>	<u>Tailgate Price</u>	<u>Skin Price</u>	<u>Saving</u>
Renault 5	£39.2	£16.75	£22.45
Chevette	£26.70	£ 9.35	£17.35

The savings in this illustration are 57 per cent in the first example and 65 per cent in the second!

The Centre also conducts regular seminars to which members of the repair industry and repair men are invited. At these meetings the Centre has an opportunity of explaining its innovative techniques to the repair industry and to the mechanics who actually do the work. It also gives the Centre an opportunity to persuade the members of the industry to support the work that the Centre is doing in the course of the operation of their own shops.

One of the problems that the Centre initially faced involved the enlistment of the co-operation of auto manufacturers. At the outset such co-operation was withheld because the obvious result of the Centre’s operations was expected to be the reduction in prices of parts sold to the repair industry. However, in view of the Centre’s policy of dealing only with the most senior personnel of the automotive industry, and in view of the obvious sense of the project that had been undertaken, the co-operation and indeed the support of the manufacturing industry was eventually enlisted. As a first step in co-operation, the manufacturers contributed sample vehicles and as confidence in the Centre grew, the manufacturers even provided samples of new models on a confidential basis, well in advance of new model release dates. This policy has given the Centre an opportunity to carry out its research and to prepare its

manuals so that they now become available almost as quickly as repair work becomes necessary on new models.

After the Centre was well under way, the manufacturers found a new and unexpected reason for giving additional support. It was soon found that manufacturers who supported the Centre and who produced the lower priced crash parts that were being designed by the Centre had the advantage of being able to advertise that the repair costs on their vehicles were very substantially lower than those on vehicles manufactured by non-cooperating companies. In addition to the appeal of reduced repair costs was the additional appeal of reduced automobile insurance premiums on vehicles that could be repaired more cheaply. When these obvious advantages became apparent the Centre quickly acquired the full support of all British automobile manufacturers.

Recommendations

The Committee has been very favourably impressed with the operation of the Centre and is most enthusiastic about the potential for loss reduction that would accrue from the adoption of such a system in this jurisdiction. **The Committee accordingly recommends** that the insurance industry be encouraged to undertake a joint project for the establishment of an automobile repair research centre in Ontario and makes the following further recommendations with regard to the practicalities of such an operation:

1. An All-Canada Research Centre should be developed and funded through the medium of the Insurance Bureau of Canada, with the encouragement of the Superintendent of Insurance. The influence of the Superintendent should be exerted to such extent as may be necessary to see that all insurers licensed to do business in Ontario will support the project on a rateable basis, so that the insurers' cost of the Centre will be spread fairly among all insurers and of course will ultimately be borne equitably by the entire driving community throughout the province.

2. It is essential that the proposed research centre invite the participation of the repair industry and of the unions involved in the repair industry. This participation should take the form of the appointment of representatives to the Board of Directors. Their participation should ensure that the Centre will have the support of these key people, without whose support the work of the Centre will be abortive. Their contribution will also ensure that, as with Thatcham, time systems will be directed toward more efficient tools and work systems and not in any way toward the exploitation of the workers in the industry. Equally important, it will also help to ensure that the project has their confidence.

3. The Committee recognizes that Thatcham is primarily involved in research into an indigenous British automobile manufacturing industry,

although some foreign models are also involved. On the other hand, such a centre in Ontario would be conducting research into an industry that carries on business throughout all of the provinces of Canada and throughout North America. It is only reasonable that the cost of the project should be shared by other jurisdictions in North America and steps should be taken at the very outset to obtain co-operation from other North American jurisdictions. In view of the obvious advantage of such a research centre, such support should be readily available.

4. The proposed research centre should focus its attention, as in the case of the Thatcham operation, upon the following:

- (a) Improvement of repair procedures;
- (b) Development of more efficient repair tools and equipment;
- (c) The development and encouragement of the marketing of less expensive crash parts;
- (d) The training and encouragement of the repair industry and its employees in the use of the products and techniques to be developed by the Centre; and
- (e) Research and development of safer automobiles.

The development of such a centre will undoubtedly result in substantial saving in repair costs and consequently in significant reductions in automobile insurance rates.

5. While the Committee has looked at the advantages of a vehicle research centre from the perspective of the automobile insurance system, it is at least equally important to emphasize the role and the responsibility of the automobile manufacturing industry in the establishment and operation of such a centre. It is therefore incumbent upon those levels of government that have jurisdiction over the manufacturing industry to use such influence as may be necessary, including legislative sanctions, to encourage the manufacturers to play their full part in the project. Their participation should consist not only in the contribution of their fair share of the cost, but also in the contribution of know-how to the work of the Centre. It is undoubtedly true that the major share of the burden for the operation of the Centre should actually fall upon the manufacturing industry. Nevertheless it is essential that the insurance industry take the lead in promoting the establishment of the Centre.

CHAPTER 19

Medical Costs and O.H.I.P. Subrogation

The Committee has had an opportunity of investigating carefully the problem that arises out of the provisions of Sections 35 to 42 of the Health Insurance Act. These sections provide that where as a result of a wrongful act a person who is insured under the Ontario Hospital Insurance Plan suffers personal injuries for which he receives health services covered by OHIP, then OHIP is subrogated to any right that the injured person may have to recover the cost incurred for the health services that have been rendered.

These sections further provide that when the injured person commences an action to recover his damages, he must include a claim on behalf of OHIP for the cost of the health services that he has received. When the injured person receives payment of the claim he must immediately pay the portion that is related to the cost of the health services rendered to the Treasurer of Ontario. A liability insurer, such as an automobile insurer, must notify OHIP of negotiations for settlement of any such damage claim and the insurer may then pay the Treasurer of Ontario any amount referable to health services rendered and upon paying that amount to the Treasurer of Ontario the insurer's obligation to the injured person is reduced correspondingly.

Quite briefly, the principal purpose of these provisions is to enable OHIP to recover its cost of rendering health services from automobile insurers and others in a similar position.

In a memo written by the Manager of the OHIP Subrogation Section dated June 3, 1976 (sometimes called the "Badham Report"), it was estimated that there were approximately 45,000 accidents involving bodily injury in Ontario in 1974. Of these the department only opened about 24,000 files leaving 21,000 accidents unreported to OHIP and presumably these were all cases in which OHIP received no reimbursement for the health services that it had rendered. The Badham Report contended that as a result there was a loss to the government of about \$3,000,000.

The Committee found that one of the methods that had been adopted by the OHIP Subrogation Section for finding out about motor accident injury cases was to obtain the co-operation of lawyers and they agreed that lawyers would be entitled to a collection fee if they were the first parties to notify OHIP of a pending claim. As a result of this policy, OHIP pays out approximately \$50,000 per month to lawyers.

In order to cope with the problem of collection, the Subrogation Section has established a substantial staff, which has recently been in-

creased to 57 personnel. This Section has also recently attempted to increase the number of bodily injury cases coming to its attention by making arrangements for accident reports to be forwarded to the Section. Under this system, when all accident reports prepared by each police department in the province are forwarded to the Ministry of Transportation and Communications, micro film copies are forwarded to the Subrogation Section. They are screened to identify bodily injury cases.

The implementation of this procedure has been made difficult because OHIP numbers are not on the police reports and these must be obtained from the injured parties with added delay in the processing of the matter in the Subrogation Section. The intention of the Section is to adopt a computer system so that within five months following the date of an accident a record of all medical costs will be produced and the insurance company will be notified of the cost of health services rendered. Every succeeding six months a new medical cost report will be generated until notification has been received that treatment has ceased or that the claim has been closed by the insurance company. A final statement is to be prepared at that time and submitted to the company.

The amount of payment by the insurance company is related to the degree of negligence attributable to its insured. Accordingly, in order to assert its claims more successfully, the OHIP Subrogation Section has a staff of ten adjusters and four claims examiners who investigate accidents and negotiate settlements with the companies.

During the course of the Committee's investigation, a number of insurance companies were very critical of OHIP efficiency and indicated that OHIP often had to be pursued in order to obtain claim amounts. Lawyers advised the Committee that OHIP is often willing to forget about a collection even where a significant amount is involved, although OHIP representatives replied that they now have a system of critical reviews by senior management where proposals are made to write off substantial claims.

In summary, it is quite obvious to the Committee that the subrogation system and the Subrogation Section are not working as the Legislature had intended.

The Committee is concerned about the relatively small amounts that have been recovered by the Subrogation Section. In 1975 the Section collected \$9,253,466 on 15,889 claims. The estimated total for 1976, despite the start that has already been made on improved systems and increased staff, is \$10,270,144 on 19,185 claims.

Recommendations:

1. After hearing the representations that have been made by the industry representatives and the views of the representatives of the Super-

intendent and after listening very carefully to the representations of the Subrogation Section, **the Committee has concluded** that a fundamental change should be made in the whole system of handling subrogation under the Health Insurance Act.

2. The Committee at first considered the advisability of simply abolishing the subrogation system in its entirety upon the thesis that substantially the same people are paying automobile premiums as are paying OHIP premiums, so that the subrogation system merely transfers funds out of one insurance system into another insurance system both of which serve substantially the same people. Upon further consideration, this alternative was rejected. In the first place, the Committee concluded that it simply was not true that insured persons under the one system were identical with insured persons under the other system. In the second place, the Committee concluded that there is no way of being sure that the savings accruing from ending subrogation would be passed on to automobile insurance policyholders.

On the other hand, the Committee concluded that it was important to stop the obvious waste of public funds that is involved in the continued operation of the Subrogation Section with its staff of adjusters, claims agents and clerks, to say nothing of the large amounts unnecessarily paid out in legal expenses. Furthermore, it was obvious to the Committee that despite these expenses the system did not work efficiently and probably could not be made to work efficiently.

The Committee therefore recommends that:

- (a) The Statistical Plan upon which the Green Book is based should be amended so that it can be adapted to solving the problem of recompensing OHIP.
- (b) The amendment should provide that every automobile insurer in Ontario be required to report to the IBC the amount of medical and hospital expense resulting from every motor accident in which its policyholders are involved.
- (c) The IBC should be obligated to report to the Superintendent of Insurance annually the aggregate amount of such expense. Such amount should be subject to verification and final determination by the Superintendent.
- (d) When the Superintendent has made a final determination of the aggregate amount of such expense in each year, he should apportion it amongst all automobile insurers carrying on business in Ontario in the proportion that their share of automobile premium business done in Ontario in that year bears to the total of all such business.
- (e) Each such insurer should be required to remit its allocated share of such expense to the Treasurer of Ontario to the credit of OHIP promptly after receiving its annual assessment.

- (f) Each such insurer should be entitled to include its projected share of such expense for a year in the calculation of its premium requirements for that year.

Finally, **the Committee recommends** that upon implementation of the foregoing programme the present Subrogation Section be disbanded.

CHAPTER 20

Reducing Losses: Driver Review Boards

During the course of the Committee's hearings, various parties, most notably the Independent Insurance Agents and Brokers of Ontario and the Insurance Bureau of Canada, strongly recommended that the Province of Ontario establish Driver Review Boards and proposed that this Committee so recommend in its Report.

In considering this proposal, the Committee has considered carefully the information about motor accidents contained in the first chapter of this Report, where the Committee positively concluded that regardless of everything else, drive action is the major cause of accidents. After many months of considering evidence about the automobile insurance system, the Committee has found that the most shocking aspect of the entire matter is the extent of the damage that is done on our roads as a result of careless driving.

The Committee has therefore concluded that the government of the Province of Ontario should take immediate steps to establish Driver Review Boards, so as to ensure that serious driving offenders are taken off the roads for the sake of the safety of the driving community generally.

This Committee recognizes that the detailed problems that are inherent in the establishment of such Boards are substantial and it does not propose to review the minutiae of the matter, particularly because the subject of Driver Review Boards is not really at the core of the Committee's terms of reference. **The Committee nevertheless wishes to make the following recommendations** with regard to its proposal:

1. Boards should be established in various localities throughout the province, rather than simply in one central location.

2. Cases should be referred to the Boards from various sources. First, the Registrar of Motor Vehicles should refer, where his computer records disclose a serious accumulation of driving convictions or points, the details of the point system being a matter for further review and deliberation. Cases should also be referred to the Boards by the courts and the police. Thirdly, cases should be referable to the Boards by the public generally because there may well be instances in which the identities of serious driving offenders will be overlooked as a result of computer error or for other similar reasons.

3. It is essential to the successful operation of a system of Driver Review Boards that there be an absolute maximum of objectivity to the tests that would determine whether a "bad" driving offender's licence should be revoked.

4. The sole object of the establishment of Driver Review Boards is the protection of the community from the damage that can be caused by such "bad" drivers. In short, prevention is of the essence of the programme and not punishment, which should be left to the courts.

5. The Committee recognizes that the creation of a complete programme of Driver Review Boards is a matter of extreme complexity. Furthermore, these Boards will deal with a matter of great sensitivity because the legal ability to drive is such a vital part of life in our society. A review of the first chapter of this Report will emphasize the total pervasiveness of the car in our society and the isolation that must result from being prevented from driving. In view of the complexity and sensitivity of the problem, the Committee recommends that commissioners be appointed to work out the programme and the Committee wishes to emphasize the importance of selecting commissioners who have established eminent reputations for competence in such matters. The Committee has in mind such persons as the Honourable James C. McRuer and the Honourable George A. Gale.

6. The Committee has received a specific proposal for implementing legislation from the Independent Insurance Agents and Brokers of Ontario. It is set out in Appendix F to this Report, along with that association's memorandum of relevant extracts from the Highway Traffic Act. Sample driver offence records of the type complained of by witnesses before the Committee are set out in Appendix G and the present point system is set out in Appendix H.

CHAPTER 21

Compensating The "Guest Passenger"

In chapter 2 of this Report, attention was drawn to the problem of deciding about the circumstances in which losses are to be lifted from an injured party's shoulders. One of the questions that arises is whether a guest passenger should have the usual rights to compensation only where the driver who has caused the loss is guilty of gross negligence, or whether such a passenger should have the usual rights of compensation upon proof of the ordinary degree of negligence on the part of the driver, exactly as in the case of any other person injured in a motor accident. It is therefore appropriate that the anomalous rule that applies to the so-called guest passenger be reconsidered.

A "guest passenger", as used in the context of this Report, is "any person who is being carried in, or upon, or entering, or getting on to, or alighting from a motor vehicle other than a vehicle operated in the business of carrying passengers for compensation".¹ The key test is not whether the passenger is riding gratuitously, but whether the motor vehicle is "operated in the business of carrying passengers for compensation". Thus, for example, if a driver and his passengers set out on a pleasure trip and it is agreed that the passengers will share the cost of gasoline, the passengers are guest passengers despite the existence of the agreement to pay money because the arrangement is not of a commercial nature and so the vehicle is not "in the business of carrying passengers for compensation".²

Before the guest passenger became the subject of special legislation his legal status, his rights and the duty of care that was owed to him had been worked out by the courts in the course of the evolution of the common law. It is quite apparent from a review of legal history that the courts, in administering common law rules, had no difficulty making adequate provision for the guest passenger. They treated him as being entitled to that same careful attention and treatment that ought to be accorded to any person in the proximity of a vehicle that was being driven. He was entitled to insist that drivers act as reasonable men in taking reasonable care not to do him harm.

It is significant to observe that, in dealing with the guest passenger, the courts do not appear to have molded the common law to give significance to the *gratuitous* aspect of his status. This is particularly interesting in view of the long and troubled experience that the courts

1. *The Highway Traffic Act* R.S.O. 1970, Chapter 202, Section 132

2. *Jackson et al v. Millar et al* (1972) O.R. 197

had in the case of the gratuitous entrant upon land. In that case, generations of judges evolved a principle, only now being laid to rest, that the duty owed to the gratuitous entrant (labelled a "licensee" or a "mere licensee") was not to do any wilful or reckless act to cause him harm, and to warn him of any hidden danger actually known to the landowner which the licensee could not reasonably be expected to anticipate. Any neglect or act of carelessness that did not contravene these low standards could be committed by the landowner with impunity. Suffice it to say here that the concept of a "second class citizen" that is implicit in this line of legal thought played no part in the approach of the courts to the guest passenger who was injured by his host's careless driving. In this instance, the courts demanded that the driver observe that same standard of reasonable care for the passenger's safety that everyone else on the road was entitled to expect. The guest passenger's difficulties only arose when legislatures began to treat him as having an anomalous legal status.

By 1930 highway traffic legislation had succeeded in evolving and stating the principle that the owner and driver were both civilly responsible for loss or damage sustained by any person by reason of negligence in the operation of the motor vehicle on a highway, unless the motor vehicle was without the owner's consent in the possession of some person other than the owner or his chauffeur.³

In 1935 the legislature turned its attention to the gratuitous passenger. It enacted an amendment to the Highway Traffic Act to provide that, notwithstanding the general principle of owner's and driver's liability cited above, the owner or driver of a motor vehicle other than a vehicle operated in the business of carrying passengers for compensation, should not be liable for any loss or damage resulting from bodily injury to, or the death of any person being carried in, or upon, or entering, or getting on to or alighting from such motor vehicle. The effect of this legislation was to exclude the guest passenger from any right of compensation no matter how negligent, reckless, or even wilful the driver's conduct might be.

It would appear that one argument that was advanced for the enactment of this legislation was the danger that owners or drivers were in a convenient position to collude with their guest passengers for the purpose of defeating defences that might be set up by insurers against claims made by guest passengers. A second argument, related to the first, was that the owner or driver whose guest passenger is injured is unduly likely to acknowledge liability and thereby to accept the loss. A third and somewhat callous argument was that a guest passenger, having paid nothing for his ride, must take his driver as he finds him. This is perhaps a variant of the notion that one cannot look a gift horse in the mouth.

3. *The Highway Traffic Amendment Act, 1930 (No. 2)*. Statutes of Ontario 1930, Chapter 48 Section 10

None of these arguments appears to the Committee to be persuasive. The insurance industry has now developed a good deal of expertise in accident investigation and in getting to the truth about the circumstances out of which an accident arose and in ascertaining the extent of injuries that have been incurred. Furthermore, there is no real reason to suppose that relationships between owners or drivers and their guest passengers are likely to be conducive to the sort of connivance that has been suggested. And yet the rule would apply to all such cases with equal force.

In 1966 a step was taken by the legislature⁴ to soften the effect of the guest passenger rule. A provision was added to the section of the Highway Traffic Act which is now Section 132 so that it now reads “. . . the owner or driver of a motor vehicle other than a motor vehicle operated in the business of carrying passengers for compensation, is not liable for any loss or damage resulting from bodily injury to, or the death of any person being carried in, or upon, or entering, or getting into, or alighting from the motor vehicle, *except where such loss or damage was caused or contributed to by the gross negligence of the driver of the motor vehicle.*”

Since the 1966 amendment the courts have sought to develop criteria for distinguishing between those acts of negligence which should be deemed to constitute gross negligence and those acts of negligence that are less culpable than gross negligence. The task has been a formidable one to say the least, and there appears to have been some tendency on the part of the courts to broaden the circumstances that can be classified as gross negligence so as to achieve a fairer result in hard cases.

In 1972, a Committee on Insurance Claims, (the “McWilliams Committee”) established by the then Minister of Consumer and Commercial Relations of Ontario submitted its report⁵ and recommended that the guest passenger rule be entirely removed from the law of Ontario.

This present Committee has now had an opportunity of reviewing this rule carefully. It has concluded that if there were ever a justification for the enactment of the guest passenger rule, it no longer exists and the Committee recommends that it be removed from the law of Ontario. **The Committee considers** that the exception embodied in the guest passenger rule is inconsistent with the basic principles of negligence law and of our modern system of automobile insurance.

More specifically, **the Committee recommends** that the abolition of the guest passenger rule be accomplished by:

(a) The repeal of Section 132 (3) of the Highway Traffic Act,

4. *The Highway Traffic Amendment Act 1966*; Statutes of Ontario 1966, Chapter 64, Section 20(2).

5. *Preliminary Report of the Committee on Insurance Claims appointed by the Minister of Consumer and Commercial Relations*, Toronto, August 25, 1972.

- (b) The repeal of Section 2 (2) of the Negligence Act, and
- (c) The proclamation of Section 14 of the Insurance Amendment Act 1973, which will have the effect of repealing Section 216 (a) of the Insurance Act.

CHAPTER 22

Naming Insurers As Defendants

Under the present law in the Province of Ontario any person who seeks to make a claim for damages arising out of a motor accident may institute an action in the courts against other drivers and owners whom he considers to be responsible in law for the damage that has been suffered. If the result of his legal proceeding is that he recovers a judgment against the defendants in his action, then as a general rule an automobile insurer, who has insured the judgment debtor for third party liability coverage, is obligated to pay the judgment to the limit of the policy plus costs and interest. If the insurer fails to do so, the claimant may maintain an action directly against the insurer to have the insurance money applied toward the satisfaction of his judgment and of any other judgments or claims against the insured covered by the contract.¹

It is to be emphasized that under the present law the claimant must first obtain a judgment against the insured before he can take legal proceedings against the insurer. The claimant may not institute a proceeding against both the insured and the insurer in the initial action. The injustice in this situation has been fully dealt with in the "McWilliams Report"², which supports the recommendations of this chapter.

One rationale for this rule requiring two separate legal proceedings has been the fact that, if the insurer were a defendant in the action, the existence of insurance coverage would inevitably come to the attention of the jury in the course of the trial of the action, and there has been a concern for many years that the result of such a disclosure would be unfairly prejudicial to the insured's case. Thus, the current practice in the courts is, that if a defendant's witness indicates in evidence that the defendant is insured, the trial judge, after hearing counsel's arguments, exercises his discretion and arranges for the re-trial of the action by another jury, or he dispenses with the jury and completes the trial himself without any jury.³

One of the fundamental recommendations of this Report has been that compulsory third party liability insurance should be adopted throughout Ontario. The result of the adoption of this principle will be that every one will presume that automobile insurance is involved in every motor accident proceeding brought in the Ontario courts. As a result, the rationale for hiding the existence of insurance will become

1. *The Act*, Section 225

2. *Preliminary Report of the Committee on Insurance Claims appointed by the Minister of Consumer and Commercial Relations*. Toronto, August 25, 1972.

3. Holmsted & Gale: *Ontario Judicature Act and Rules of Practice*; Toronto, 1976, page 233.

meaningless. In these circumstances there should not be any justification for retaining the rule which precludes the claimant from joining the insurer as a defendant along with the insured.

The Committee was interested to observe during the course of its investigations in Switzerland that under Swiss law judicial proceedings for damages arising out of a motor accident were taken against the insurer. One of the results of this system was that insurers assiduously sought to avoid becoming involved in court proceedings so as to avoid the bad publicity that would result if their names appeared as defendants with undue frequency. The result was, in the opinion of the representatives of the Swiss Regulatory Authority, that motor accident claims were processed and settled much more expeditiously than would otherwise be the case. The Committee has considered the Swiss example with a good deal of care. The Committee has been impressed with the potential that such a rule has for encouraging prompt settlement on the part of insurers by reason of the risk of adverse publicity. The Committee has also considered the additional advantage that the possibility of duplication of legal proceedings would be eliminated.

The Committee therefore recommends that the law and practice of the courts of the Province of Ontario be amended so as to provide that a plaintiff in any action for damages arising out of a motor accident shall institute his action not only against the other drivers and owners involved in the accident but against their insurers as well. In uninsured driver cases, the Motor Vehicle Accident Claims Fund should be named as a defendant in the same way and for the same reasons that an insurer would be named if there were one.

CHAPTER 23

Inevitable Accident

The Committee has given consideration to the concept of “inevitable accident” that has been asserted in the courts from time to time in actions for damages for negligence, particularly in motor accidents. In particular, the Committee has been concerned that this concept may distort the proper operation of the loss distribution system that is the real subject of this Report.

To be specific, the problem generally arises in cases where

- (a) there has been a mechanical failure or defect in the defendant’s automobile that causes or contributes to an accident and the claimant cannot establish that the defendant knew or ought to have known of the potential failure and ought to have rectified it;
- (b) there has been a failure in the defendant’s physical or mental capacity to control his vehicle, of a type that the defendant did not foresee and could not reasonably be expected to foresee, such as the case of an unanticipated heart attack or epileptic seizure; or
- (c) there is an extraneous force that intervenes in the driving situation that is in no way related to the drivers or vehicles involved, e. g., lightning, hurricane or the like.

It is apparent that much confusion of thought exists about this so-called defence to a cause of action for damages. In truth it is really a way of saying simply that the plaintiff has *no* cause of action for the simple reason that the defendant was not at fault. In other words, “inevitable accident” does not really describe a defence; rather it describes the situation where the claimant simply has no case because the defendant was not negligent in law. It is a way of saying that the claimant is unable to establish that the defendant was at fault and so he cannot recover under a fault system of negligence law.

It has been urged upon the Committee that the law of Ontario should be changed so that the concept of inevitable accident will no longer be available to defendants in motor accident proceedings, particularly in cases of unforeseeable mechanical failure or unpredictable physical incapacity.

The Committee has considered this proposal with great care and indeed has been tempted to accede to the proposal for the sake of the victims of such accidents. After further consideration, however, the Committee has concluded that it ought not to do so for the following reason.

As has been explained in chapter 2, our society has chosen to adopt a general doctrine that a person is to be compensated for such losses only to the extent that they are caused by the fault of another. Furthermore, our automobile insurance system distributes losses only to the extent that they are caused by the fault of the insured. (Accident Benefits coverage is, of course, an exception that has been built into the system but it is not a negation of it.) So long as fault is generally an essential ingredient of our motor accident law and of our automobile insurance system, it is improper to make an arbitrary choice of two isolated situations and to declare that the doctrine of “no-fault” should apply to them, — and to them alone.

If a general doctrine of compensation without fault is to be adopted in Ontario, **it is the Committee’s opinion** that it should be as a result of thorough consideration and the deliberate acceptance of the concept as a general principle. It ought not to be applied arbitrarily in a few isolated situations.

The Committee has therefore rejected the proposal.

DISSENTING OPINION OF:

Vernon M. Singer, Q.C., M.P.P.

Bud Germa, M.P.P.

Patrick J. Lawlor, Q.C., M.P.P.

Floyd Laughren, M.P.P.

In relation to the Committee’s consensus that the defence of inevitable accident be allowed to continue as part of the law of the Province of Ontario, we are unable to concur in the consensus of the majority of the Committee’s members.

We quote herewith the opinion on this item of the Select Committee on Automobile Insurance delivered to the Legislature in March of 1963:

“The Defence of Inevitable Accident

“In its submission to the Committee, the special committee on trial of damage claims, appointed by the Law Society of Upper Canada made the following observations (pages 84-86, Committee proceedings for October 26, 1962):

‘With so many older models of cars on the highway, the condition of the brakes, mechanical equipment and tires is often not of the best, but nonetheless the condition is often not known to the owner. Suddenly there might be a breakdown and in a few cases the car goes out of control and injures someone. When sued by the innocent sufferer, the owner’s insurer raises the defence of unavoidable accident. This defence sometimes succeeds, although more often it is denied. It is submitted the

owner should be responsible for all defects in his motor vehicle, and The Highway Traffic Act should be amended accordingly.

‘RESPONSIBILITY FOR PHYSICAL OR MENTAL CONDITION OF OPERATOR.

It has been established in Ontario that if without negligence on his part the operator loses consciousness, or dies, or becomes insane and causes injury the innocent sufferer cannot recover. This disability in the operator is something that should be assumed by the insurer of the vehicle rather than by the person suffering injury. It could be assumed with probably no increase in the insurance rates.’

“The Committee feels that justice will be better served if the defence of inevitable accident is eliminated and recommends that appropriate legislative steps be taken to do so. There is, after all, no reason why any party should suffer financial ruin by reason of an unavoidable accident which stems either from a sudden defect of a motor vehicle or the illness or death of the driver of a motor vehicle. The Committee believes that such admittedly rare occurrences should be absorbed in the existing insurance arrangements even if the result is a very minor increase in premium rates or, in the case of an uninsured vehicle, should be borne by the Motor Vehicle Accident Claims Fund.”

In addition, we quote herewith the comments set out in the McWilliams Report on the defence of inevitable accident:

“The Final Report of the Select Committee on Automobile Insurance of the Legislative Assembly of Ontario in March 1963, recommended that the defence of “Inevitable Accident” be eliminated by appropriate legislative amendment. This recommendation has not been acted upon. Many submissions were made to us in favour of this recommendation with which we agree, although with some qualifications.

“The essence of the defence of inevitable accident is that there is no negligence on the part of the person alleged to have caused the injuries. The defence usually arises as a result of some inherent defect in the motor vehicle or its repair, or some unknown and inherent defect in the driver of the motor vehicle, causing the driver to lose control of the vehicle. This can take the form of a heart attack, epileptic seizure, or any number of other maladies which may or may not be expected.

“Too often, however, the defence of inevitable accident is used to advantage by insurers and by their counsel as a bargaining device to

extract a more favourable settlement from a claimant on the theory that the recovery of the claimant will be on an 'all or nothing' basis. If the defence succeeds, the Court must find that there was no negligence on the part of a defendant and therefore there is no cause of action that the plaintiff can sustain. It is well known that the Courts are loath to give effect to this defence except in the clearest cases but the possibility always exists and this possibility is used as a lever to extract settlements which otherwise would not be possible. The insurers are frank to admit that this defence could be eliminated without material consequence to them.

"We do not think that any driver or owner should be able to plead inherent defect or vice in his own vehicle or in his own body as a defence against an innocent third-party. These are all risks which must be assumed by the owner and driver to the same extent as the risk of negligence and motor vehicle liability policies must contemplate this possibility to the same extent.

"There are, however, other factors which can cause accidents over which no party has any control and which may be characterized as true acts of God: e.g. lightning, flood, hurricane. In these cases, and in similar and analogous cases, we think that the defence should remain.

"There is, of course, an argument in favour of the proposition that all bodily injury, death and property damage caused on a highway by a motor vehicle as a result of those classifications of inevitable accident which can be characterized as true acts of God should, somehow be compensated. We do not agree with this proposition. It results in an unwarranted preference being extended to those people who are involved in accidents where no negligence is shown, where no defect in the driver or the motor vehicle is present and where the presence of a motor vehicle is a mere incident to the happening of the event. Many people are injured and killed every year by earthquake, flood, hurricane, avalanche and other natural disasters in which automobiles may be incidentally involved and there is never any suggestion that they should recover because they happen to be in or close to a motor vehicle at the time of the catastrophe.

WE RECOMMEND:

30. (a) that no person be permitted to plead the legal defence generally known as 'inevitable accident' or absence of negligence as against a third party claimant when the cause of the damage arises from some inherent vice or defect in either the motor vehicle of the defendant or in his physical or mental condition;

(b) that, similarly, no such defence should be available to the Minister under the Motor Vehicle Accident Claims Act.”

For the reasons set forth by the Select Committee on Automobile Insurance in 1963 and by the McWilliams Report in 1972 and because of a very strong personal conviction that the availability of such a defence would allow innocent parties to be penalized most unfairly, it is our very strong conviction that this defence should be abolished by the passing of appropriate legislation.

We are satisfied from the evidence accepted by the Select Committee in 1963 and by the comments of Mr. McWilliams relating to the evidence that his Committee received, that such a step would not only bring a greater degree of fairness to our system of justice but would not result in any undue cost to the insurers or additional cost to those people who pay premiums for automobile insurance.

Notwithstanding the consensus of the majority of the Committee, we personally strongly urge that the Government see fit to accept the recommendations of the Select Committee of 1963 and the McWilliams Report and our very strong feelings.

PART V
COMPULSORY THIRD PARTY LIABILITY
INSURANCE

CHAPTER 24

The Principle of Compulsory Third Party Liability Insurance

The Committee strongly recommends the enactment of legislation requiring that every person who owns a licensed automobile have a valid policy of automobile insurance providing third party liability coverage and accident benefits coverage.

The principle on which compulsory automobile insurance is based is that every person who owns an automobile that is used on public roads has a moral obligation, — and ought to have a corresponding legal obligation, — to bear his fair share of the losses that are incurred on the roads and should be entitled to benefit from the payment by other automobile operators of *their* fair share of such losses through *their* insurance premiums. This principle of reciprocal benefit and obligation is so axiomatic that it should hardly need argument or justification in order to be accepted.

It has become increasingly important to establish the principle of compulsory automobile insurance as the losses incurred in individual motor accidents have increased. At an early stage in the development of the automobile it may have been true that the loss incurred in a typical motor accident was less than catastrophic. Since then, however, there has been an increase in road use, in speed and in the value of the automobiles that are involved and the result has been that the losses arising out of modern accidents are more likely to be severe and, without the benefit of a loss distribution system, they may well be economically disastrous to those involved.

The Committee has found that a rule requiring compulsory automobile insurance has been adopted in most American States, in the United Kingdom, Switzerland, Finland, Sweden, Denmark, West Germany, France and other European countries and in all the Canadian Provinces except Ontario and Quebec. In Quebec a report on automobile insurance was published in 1974¹ and the concept of a full system of compulsory automobile insurance is basic to its recommendations.

The Committee notes that compulsory automobile insurance was one of the topics that was considered by the Committee on Insurance Claims appointed by the Minister of Consumer and Commercial Relations of Ontario. In the Committee's Report of August 25, 1972, (the "McWilliams Report") the Committee stated, at page 323, that:

1. *Rapport du Comité d'Étude sur l'Assurance Automobile; Gouvernement du Québec*, 1974. (Frequently designated the "Gauvin Report".)

“the time has passed when anyone can seriously argue with the proposition that all persons operating a motor vehicle should be covered by public liability insurance. From the frequency of requests from people who appeared before us throughout the province, — and these were members of the public, agents, adjusters, solicitors and insurance representatives, — we think that the people of Ontario would accept, if not demand, the requirement that all persons owning a motor vehicle in Ontario should be insured. There is no longer any justification for permitting a man the choice of insuring himself or paying a fee in lieu into the Motor Vehicle Accident Claims Fund.”

In the course of its public sessions this Committee has also received numerous requests that third party liability coverage and accident benefits coverage be made compulsory. Amongst those making this request were the representatives of the Canadian Association of Consumers, The Ontario Risk and Insurance Management Association, the Independent Insurance Agents and Brokers of Ontario, the Honourable James C. McRuer, and representatives of some insurance companies, notably the Royal Insurance Company of Canada. More recently, Mr. A. A. Horsford, the President of the Royal Insurance Company of Canada, has publicly called for the immediate introduction of compulsory insurance.

The Committee has tried to ascertain the number of uninsured drivers on the roads of the province, but this task turned out to be more difficult than first appeared. It was simple enough to determine that approximately three per cent of licenced drivers pay fees to the Fund in a given year because they are uninsured and to conclude that there is at least that proportion of uninsured drivers on the roads. However these constitute only a part of the uninsured drivers on the roads. In addition, there are owners whose insurance is cancelled or expires after they have obtained licence renewals and do not renew. Again, there are some people who obtain coverage so as to obtain licence renewals without payment into the Fund and thereupon cancel the policy. There is also an indication that some drivers simply certify falsely that they have coverage when they apply for licence renewal. It is impossible to measure the total number of uninsured drivers, but it is significantly larger than the number of fees paid into the Fund would suggest.

“Self Insurers” and Conscientious Objectors

The present rule in Ontario requiring either insurance coverage or payment into the Motor Vehicle Accident Claims Fund is subject to an exception. The owner of a motor vehicle may deposit with the Registrar of Motor Vehicles money, securities or a bond in an amount equal to the minimum limit of liability currently provided by Section 218 of the Insurance Act (i.e. \$100,000 at present) security to ensure the payment of

motor accident claims.² The rationale for this exception is that the money, securities or bond is tantamount to third party liability coverage and stands in the place of such coverage. This provision is used primarily by major companies such as Bell Canada and the railroads, and they are said to “self-insure” rather than carrying insurance coverage with an automobile insurance company.

Under a compulsory system of automobile insurance such as has been recommended by the Committee and particularly where the third party liability coverage is to be in an unlimited amount, it will no longer be acceptable for self-insurers to continue the practice described above and they will accordingly be expected to maintain automobile insurance coverage in the same manner as any other licence holder.

The Committee recognizes that the end of this exemption may cause inconvenience to those who heretofore have availed themselves of it. However, the Committee is satisfied that such organizations will still be able to make arrangements with their insurers whereby they will undertake to pay their own claims and will indemnify their insurers against loss by reason of having issued the policy. Under such an arrangement the public will be fully protected by reason of the existence of automobile insurance coverage. At the same time, through the use of the agreement, the former “self-insurer” will in practice be able to accomplish for itself substantially the same financial arrangements with regard to automobile insurance as it heretofore has done.

The Committee has also received representations from The Conservative Mennonite Churches of Ontario who have asked that they not be compelled to carry automobile insurance on the ground of conscientious objection, because it is against their religious tenets to protect themselves by means of insurance. The Committee has been seriously concerned about this request and has discussed it at length. On the one hand, members have felt that it is important to try to accommodate differing religious views in a multi-cultural society such as Ontario's. On the other hand, the Committee has been anxious to accord all of the public the protection of a universal automobile insurance system. The Committee has concluded that conscientious objectors such as the members of Mennonite congregations should have no difficulty in arranging for the requisite automobile insurance coverage with an insurer of their choice upon the understanding that they will see that the insurer is not in fact called upon to make any payment under the policy. If and when a proper claim is made against a Mennonite, he and his co-religionists will be able to settle the claim out of their own pockets in accordance with the practice that they currently follow and without the insurer being called upon to make any payment under its policy. It is the Committee's understanding

2. *The Motor Vehicle Accident Claims Act*, R.S.O. 1970, Chapter 281 Section 2(2)(b)

that the principal religious objection is not the buying of the policy but the placing of reliance upon the insurance system for protection. Under the plan outlined above, the Committee is satisfied that the public will be fully protected while at the same time the Mennonite congregations will not be forced to rely upon the insurance system in contravention of their convictions. Furthermore, in view of the high degree of financial responsibility within the Mennonite community, the Committee has no doubt that the necessary arrangements can be made with an appropriate insurer at nominal cost in view of the policyholders' undertaking that the insurer will not be called upon to make payments under the policies.

CHAPTER 25

Enforcing Compulsory Insurance The Irrevocable Policy

Having concluded that the Province of Ontario ought to adopt a system of compulsory automobile insurance, the Committee considered the problem of compliance and enforcement that logically follows from the adoption of this principle. Various methods of ensuring compliance were considered by the Committee and these are reviewed in this chapter.

The law will, of course, require that every owner have insurance during the currency of his plates and that he be prosecuted if he does not. This will be enforced by the police through spot checks and similar investigations.

It has been suggested that in addition to normal police surveillance, the law should require the giving of notices by insurers to the Registrar of Motor Vehicles when automobile insurance policies are cancelled, so that the Registrar can see that the corresponding automobile licence is cancelled. This is the system that has recently been adopted in New Brunswick and Prince Edward Island, but it is as yet premature to know the results of their experience with it. The Committee envisioned that this system would require the establishment of procedures similar to the following:

- (a) The introduction of compulsory insurance would have to be accompanied by a major advertising campaign to warn motorists of the new programme.
- (b) If a policy were cancelled, careful steps would have to be followed to bring the termination to the insured's attention so that he would be sure to be aware that it is unlawful to drive the vehicle that has been covered by the cancelled policy. This notice would probably have to be by registered mail.
- (c) At the time of the cancellation of the policy, whether by the insurer or the insured, the insurer would have to give written notice to the Registrar of Motor Vehicles and such notification would be a prerequisite of the insurer's treating the cancellation as being effective. In order to be able to treat the policy as having been cancelled effectively, the insurer would probably again need to give such notice by registered mail.
- (d) Upon receipt of such notice from the insurer, the Registrar would match it to his corresponding record of that automobile licence to determine whether the motorist had surrendered his licence or had

filed a new certificate of insurance from some other insurer. This step, to be effective, would require that all surrenders of automobile licences and all filings of insurance certificates be collated very promptly with the corresponding record of that automobile licence.

- (e) If the Registrar ascertained that the automobile licence had been cancelled, or that a certificate of substitutional coverage had been filed, he would not need to take any action. However, if he were to find that the licence was still outstanding, he would have to notify the licence holder and follow this up, either within his own office or eventually through the police, to ensure that the licence was duly surrendered.
- (f) Ingenuity and experience may result in the simplification of the foregoing procedures, but it is reasonable to presume that even after refinement such a system would be essentially as described above.

Although to all appearances the foregoing system seemed hopelessly complex, the Committee nevertheless felt that it might be a system that might be feasible if it were done through the use of computers. It was therefore referred to computer systems consultants who were retained by the Committee. Gellman, Hayward and Partners Limited, represented by Dr. Harvey S. Gellman, investigated the problem and reported back to the Committee that it is not operationally feasible to have computer files that contain current and accurate information about vehicle registrations, insurance policies and individuals. He therefore strongly recommended against any attempt to try to track all insurance policies through the use of a computer system. His report is annexed to this Report as Appendix I. After careful consideration, the Committee has adopted this recommendation and has concluded that this system of enforcement, based on the "matching" of a vast mass of papers, ought not to be adopted.

The Committee has also considered the advisability of recommending an irrevocable automobile insurance policy and is of the view that such a system may be the most effective method of enforcing compulsory automobile insurance. The Committee is, nonetheless, aware of the difficulties that may be encountered in implementing the proposal. It has weighed many of these difficulties carefully and has also weighed the importance of the non-cancellable policy in an over-all plan for fully effective automobile insurance. **The Committee has concluded** that greater weight ought to be given to the implementation of a fully effective insurance programme for the province. However, the Committee has referred the matter to its consultants for further research.

CHAPTER 26

Compensating The Victim of The Uninsured Driver: The Motor Vehicle Accident Claims Fund

The objective of a system of compulsory automobile insurance is to ensure that every motorist has coverage so that the mechanism for loss distribution will work as effectively as possible. However, it is reasonable to presume that no such system will ever be perfect and so there will always be an irreducible minimum of motor accidents caused by uninsured drivers.

Even after the methods of enforcement which are recommended by this Report are adopted, at least four categories of uninsured drivers will continue to exist:

1. Drivers who are operating vehicles without the consent of the owner. This category includes particularly car-thieves and “joy-riders.”
2. Uninsured drivers from an out-of-the province jurisdiction.
3. Unlicensed, uninsured Ontario vehicles. It is unlikely that this category will include any significant number of vehicles of types that are ordinarily used on the highway since they will have to be licensed, which means that they will have to be insured. The incidence of automobiles on the road that do not have licence plates is so small as to be negligible, — indeed almost unheard of. However, there is a category of vehicles that is not required to hold a licence because they are not normally made or used for road transportation. Sometimes, however, they are to be found on the roads for short periods. Included in this category are farm vehicles such as tractors either alone or towing a load, snow vehicles, all-terrain vehicles and construction equipment.
4. Unidentified owners or drivers. The problem of the hit-and-run accident will always continue to present problems in compensation. For present purposes, such persons pose the same problem as uninsured drivers.

At present, losses caused by uninsured and unidentified drivers in Ontario are currently dealt with through the system set up under the Motor Vehicle Accident Claims Act. The programme provides as follows:

1. It provides for the establishment of the Motor Vehicle Accident Claims Fund (the “Fund”).

2. A motor vehicle owner when applying for his automobile licence or renewal satisfies the Registrar of Motor Vehicles that he is duly insured or in the alternative he deposits with the Registrar money, securities, or a bond that can be treated as the equivalent of insurance. Failing that, he must pay an uninsured motor vehicle fee into the Fund when he applies for an owner's permit or the renewal of an owner's permit for his automobile. This fee is currently \$100.00. In addition, all applicants for drivers' licences must pay a fee to the Fund, whether or not they hold insurance coverage, in the sum of \$1.00. Provision is also made to subsidize the Fund out of the Consolidated Revenue Fund if it should become necessary to do so.
3. A motor vehicle owner must on demand produce evidence either of automobile insurance coverage or of payment of the uninsured motor vehicle fee.
4. Where any loss is occasioned by an uninsured motor vehicle or by an unidentified motorist, any person who has a cause of action against the owner or driver is entitled to apply for and obtain payment of his damages out of the Fund.
5. The limits of such payments out of the Fund are the same as the minimum policy limits currently in effect under The Insurance Act.
6. No payment may be made out of the Fund in respect of an amount that would otherwise be payable by an insurer under an automobile insurance policy.
7. When a payment is made out of the Fund, the Minister of Consumer and Commercial Relations is subrogated to the rights of the recipient and he can proceed against the other driver and/or owner in the same way as the original claimant might have done.
8. The driver's licence and the ownership permit of the person or persons causing the damage are suspended until arrangements are made to repay the amount of the loss to the Fund.

The Committee has had an opportunity of examining the ways in which the problem of the uninsured driver is handled in some other jurisdictions.

In the United Kingdom, the industry has established its own Motor Insurance Bureau which pays uninsured driver claims and then bills its costs back to all of the automobile insurers in the country rateably. In Switzerland, the government regulatory authority arranges for an automobile insurance company to handle all uninsured driver problems and pays a premium to the company for doing so. This premium is then charged back against all automobile insurance companies rateably. The

New York State solution has been to establish a Motor Vehicle Accident Indemnification Corporation which is owned and funded by members of the industry who share rateably in the cost of its operation. This system is similar to that in the United Kingdom, but in practice there are a series of limitations on its operation which impair its effectiveness.

Recommendations

1. After reviewing the various techniques that have been tried in other jurisdictions to resolve the problem of the uninsured or unidentified driver, **the Committee has concluded** that Ontario's Motor Vehicle Accident Claims Fund is the most suitable to Ontario's circumstances and it recommends that the Fund be retained.

2. The Committee, however, is concerned with regard to certain specific aspects of the operation of the Fund, the first of which is the problem of financing the Fund.

A statement of the Fund's operations for the years 1974, 1975 and 1976 follows:

STATEMENT OF OPERATIONS (\$000's)

Receipts

Driver's Fee (\$1.00 annually)	\$ 3,825	\$ 4,415	\$ 4,877
Uninsured Motor Vehicle Fee	4,427	4,484	5,791
Repayment by Debtors	1,910	2,139	2,394
Interest on Fund Balance	1,944	2,565	2,314
Total Receipts	\$12,106	\$13,603	\$15,376

Payments

Claim Cases	\$ 2,060	\$ 2,171	\$ 2,252
Judgment Cases	5,088	6,766	8,557
Hit-and-Run Cases	853	1,376	1,689
Administration Costs	1,574	1,795	2,470
Total Payments	\$ 9,575	\$12,108	\$14,968
Opening Fund Balance	\$27,479	\$30,010	\$31,505
Excess Receipts over Payments	2,531	1,495	408
Closing Fund Balance	\$30,010	\$31,505	\$31,913

Source: MVACF Statement of Operations

3. It is apparent from this statement that approximately one-third of the Fund's receipts come from the uninsured motor vehicle fee. This fee will be eliminated under the new compulsory insurance system that the Committee has recommended. On the other hand, the compulsory insurance system should reduce very substantially claims to be made on the Fund.

4. The Committee has examined its consultants' analysis of the Fund's legal expenses for the year ended March 31, 1976. It showed that legal costs paid to claimants' lawyers amounted to \$1,263,000, which was 10.1 per cent of the total claims paid. It also showed that the legal fees paid by the Fund to its own lawyers amounted to almost exactly the same sum for a total legal cost of 20.2 per cent of claims paid. All of the Fund's own legal fees were spent by the Fund in retaining outside lawyers.

The Committee recommends that the Fund employ full-time lawyers on its staff to act on behalf of the Fund and that outside lawyers be retained in only the most difficult cases. The Committee believes that this system would result in increased efficiency and substantial savings.

5. There appears to be no provision in the Motor Vehicle Accident Claims Act to permit out-of-court settlements in cases where infants are slightly injured. **The Committee therefore recommends** that the Act be amended so as to authorize the settlement of such cases and the acceptance of an indemnifying release from the parents in minor cases. This practice has been followed generally in the industry with no apparent difficulty.

PART VI
THE AUTOMOBILE INSURANCE INDUSTRY IN
ONTARIO

CHAPTER 27

The Insurance Companies

A. ORGANIZATION

The initial Part of this Report described the motor vehicle system and explained the role that automobile insurance ought to play in servicing that system. Subsequent Parts dealt with the policy and the coverage it ought to provide; the premium; the handling of claims and the steps that ought to be taken to ensure the universality of insurance protection. This Part deals with the automobile insurance industry in Ontario today — how it is organized and financed; how it is monitored by the Superintendent of Insurance; what its financial capacity is to service the motor vehicle system; how it reinsures its risks, and finally how the industry's contribution to the automobile insurance system can be improved. This chapter describes the organization of the industry.

As of December 31, 1975, there were 181 organizations, a few of them inactive in the year, licensed to write automobile insurance in Ontario. These 181 organizations reported automobile premiums written in the province in 1975 of \$815.3 million. A list of these companies together with some pertinent details concerning each, — ownership, group affiliation, premiums written, etc., — is set out in Appendix J. There were also 24 reinsurers licensed for reinsurance only and they are similarly described in that Appendix.

The 181 organizations, licensed or writing automobile insurance in Ontario are summarized by their jurisdiction of incorporation as follows:

Jurisdiction	Organizations		Direct Automobile premiums written — 1975	
	Number	Per cent	Amount (\$000's)	Per cent
Ontario	17	9.4%	\$128,739	15.8%
Federal	68	37.6	378,642	46.4
Total Canada	85	47.0	\$507,381	62.2%
British	27	14.9%	\$101,744	12.5%
Foreign	69	38.1	206,147	25.3
Total Foreign	96	53.0%	\$307,891	37.8%
Total	181	100%	\$815,272	100%

A unique British organization, Lloyd's, which insure risks the same as other insurers, is listed as a company. In fact, Lloyd's is not a company but is an organization based on groups of individuals who underwrite risks. As such, each individual is personally liable for any amount insured and is required to meet certain financial criteria for membership. Lloyd's

operate in Canada by special agreement with each of the provinces and report to each Provincial Superintendent the results of their operations in Canada and are required to keep assets on deposit in Canada on the same basis as other non-Canadian insurers. Lloyd's have no offices in Canada other than a chief agent in Montreal. Instead they use various brokers to act on their behalf.

Seventeen of the companies are incorporated in Ontario and report directly to the Ontario Superintendent of Insurance. The remainder of the organizations are either Canadian incorporated companies or branches of British or other foreign organizations and report to the Federal Superintendent of Insurance.

Of the 181 organizations, about half (85) are incorporated either in Ontario or federally, while the other half (96) are operated as branches. The premiums written by companies incorporated in Canada are significantly greater (62.2% of the total) than premiums written by "branch" organizations.

The following are the automobile insurance companies carrying on business in Ontario whose head offices are located in Ontario, together with the direct automobile premiums written by them in 1975, for the purpose of indicating the relative volume of business done by each:

Incorporated in Ontario with Head Office in Ontario	Direct automobile premiums written — 1975
Abstainers Insurance Company	\$ 4,173,409
Anglo Canada General Insurance Company	866,609
Bay City General Insurance Company	780,077
Cooperators Insurance Association	70,812,057
Coronation Insurance Company Limited	2,725
Gerling Global Insurance Company	2,476,338
Gibraltar General Insurance Company	4,054,987
Ontario Motorist Insurance Company	2,689,898
Pafco Insurance Company Limited	4,605,959
Pilot Insurance Company	23,884,605
Premier Insurance Company	—
Provident Insurance Company	31,241
Scottish & York Insurance Company Limited	9,330,362
Simcoe & Erie General Insurance Company	2,651,774
Transportation Fire & Casualty Company	569,820
United Provinces Insurance Company	1,117,237
York Fire & Casualty Company	691,863
Total incorporated in Ontario	\$128,738,961

**Incorporated in Canada
with Head Office in Ontario**

Albion Insurance Company of Canada	\$ 1,758,613
Allstate Insurance Company of Canada	33,208,376
British America Assurance Company	6,767,420
The Canada Accident & Fire Assurance Company	3,294,592
Canada Security Assurance Company	588,817
Canadian General Insurance Company	12,275,888
Canadian Pioneer Insurance Company	78
Canadian Provincial Insurance Company	790,370
Canadian Surety Company	3,822,479
Casualty Company of Canada	6,634,091
CNA Assurance Company	3,595,131
Commercial Union Assurance Company of Canada	8,917,608
Consolidated Fire and Casualty Insurance Company	135,200
Constitution Insurance Company of Canada	9,837,749
Dominion of Canada General Insurance Company	26,147,077
Dominion Insurance Corporation	10,837,089
Eagle Star Insurance Company of Canada	(733)
Eaton Insurance Company	2,376,600
Economical Mutual Insurance Company	23,697,853
Federal Fire Insurance Company of Canada	5,070,392
Fidelity Insurance Company of Canada	2,190,541
General Accident Assurance Company of Canada	23,724,314
Globe Indemnity Company of Canada	1,782,221
Gore Mutual Insurance Company	16,092,428
Guardian Insurance Company of Canada	17,826,347
Hudson Bay Insurance Company	1,445,863
Imperial Guarantee and Accident Insurance Company of Canada	693,616
London & Midland General Insurance Company	44,843
Markel Insurance Company of Canada	5,897,691
Personal Insurance Company of Canada	619,586
Perth Insurance Company	2,632,749
Phoenix Assurance Company of Canada	7,501,927
Pitts Insurance Company	3,108,245
Scottish Canadian Assurance Corporation	18
Sovereign General Insurance Company	3,256,010
Sun Alliance Insurance Company	9,092,563
Toronto General Insurance Company	643,490
Traders General Insurance Company	398,885
Travellers Indemnity Company of Canada	19,522,268
United Canada Insurance Company	1,251,369
Victoria Insurance Company of Canada	488,468
Waterloo Mutual Insurance Company	5,770,491
Wellington Fire Insurance Company	16,344,609
Western Assurance Company	30,767,443
Total incorporated in Canada	\$330,850,675
Summary	
Incorporated in Ontario with Head Office in Ontario	\$128,738,961
Incorporated in Canada with Head Office in Ontario	330,850,675
Total	\$459,589,636

Another analysis based on the ownership of these organizations presents a somewhat different picture:

Ownership	Organizations		Direct Automobile premiums written — 1975	
	Number	Percent	Amount (\$000's)	Percent
Canadian	38	21.0%	\$217,710	26.7%
Foreign	143	79.0	597,562	73.3
Total	181	100.0%	\$815,272	100.0%

As this analysis indicates, most organizations writing in the province are foreign-owned and premiums written by these organizations are roughly proportionate to their number (79 percent by number and 73.3 percent by premiums written).

Many of the 181 individual organizations licensed to write automobile insurance are affiliated with others. Combining companies by their group affiliations reduces the number of Canadian owned organizations to 33 and the number of those that are foreign controlled to 97, for a total of no more than 130. (It is understood that there may be other affiliations that exist that could reduce the number of group affiliations to less than 130 but those described here are the ones generally recognized in the industry.) An analysis of these 130 groups, ranked by automobile premiums written in 1975 in the Province, follows:

Direct Automobile premiums written-1975 (\$000's omitted)	Ownership		
	Canadian	Foreign	Total
Less than \$5 (effectively inactive)	8	27	35
\$5-\$ 1,000	5	19	24
\$1,000-\$ 5,000	12	20	32
\$5,000-\$20,000	5	21	26
Over \$20,000	3	10	13
Total	33	97	130

Almost half (59) of the total groups wrote premiums of less than \$1 million in the year, while only 13 groups wrote more than \$20 million.

A further analysis of the degree of concentration in the industry, based on group affiliations, revealed:

Number of organizations/groups	Direct Automobile premiums written-1975 (\$000's omitted)	Percent of Total	Percent Canadian owned of Total
5 largest	\$267,474	32.8%	8.7%
10 largest	412,177	50.5	12.7
25 largest	616,370	75.6	20.7
Total-130	\$815,272	100.0%	26.7%

Almost a third of the direct premiums written in the province were written by five organizations and over half were written by the ten largest companies or groups. These 25 companies or groups are:

	Ownership	Direct Automobile premiums written-1975 (\$000's omitted)	Percent of Total
Royal Insurance Group	British	\$ 86,454	10.6%
Cooperators Insurance Assoc. (CIAG)	Canadian	70,812	8.7
State Farm Insurance Companies	Foreign	40,691	5.0
Shaw & Begg Group	Foreign	35,814	4.4
Zurich Insurance Company	Foreign	33,703	4.1
Allstate Insurance Company	Foreign	33,208	4.1
Dominion of Canada Group	Canadian	32,781	4.0
Commercial Union Insurance Group	British	31,105	3.8
Pilot	Foreign	23,885	2.9
General Accident Group	British	23,724	2.9
Economical Mutual Insurance Company	Canadian	23,698	2.9
Travellers Insurance Group	Foreign	20,187	2.5
Guardian Insurance Company of Canada	British	17,826	2.2
Gore Mutual Insurance Company	Canadian	16,092	2.0
Lumberman's Mutual Casualty Company	Foreign	14,811	1.8
Canadian General Group	Canadian	13,318	1.6
Liberty Mutual Group	Foreign	12,760	1.6
Continental Insurance Companies	Foreign	12,589	1.6
The Wawanesa Mutual Insurance Company	Canadian	12,174	1.5
Lloyd's	British	10,769	1.3
Hartford Group	Foreign	10,507	1.3
The Home Insurance Company	Foreign	10,297	1.3
Chubb and Son Group	Foreign	9,996	1.2
Constitution Insurance Company of Canada	Foreign	9,838	1.2
Scottish & York Insurance Company	British	9,331	1.1
25 Largest		\$616,370	75.6%

One Canadian owned organization is in the five largest and two and six respectively are in the ten and twenty-five largest.

B. FINANCIAL OVERVIEW

A summary income statement of the automobile portion of the insurance operations of organizations carrying on business in Ontario for the years ended December 31, 1971 to 1975 follows:

AUTOMOBILE INSURANCE INDUSTRY — ONTARIO¹

ESTIMATED INCOME STATEMENT FOR THE YEARS ENDED DECEMBER 31, 1971 TO 1975

(in thousands)

	1971	1972	1973	1974	1975
Net premiums written	\$427,375	\$493,102	\$554,965	\$635,078	\$811,089
Net premiums earned	427,386	477,676	499,691	616,958	731,553
Net claims incurred (including adjusting expenses)	299,506	356,550	403,541	496,757	568,675
Net commission expense	58,152	66,301	73,114	83,415	105,674
Premium taxes	8,425	9,680	10,537	12,545	16,090
General expenses	62,657	70,067	77,048	91,767	103,576
	428,740	502,598	564,240	684,484	794,015
Loss before investment income and taxes	(1,354)	(24,922)	(64,549)	(67,526)	(62,462)
Investment income	37,311	43,883	47,409	62,314	70,201
Other income (expense)	125	173	279	(776)	(704)
Profit (loss) before income taxes	\$ 36,082	\$ 19,134	\$ (16,861)	\$ (5,988)	\$ 7,035

Combining the data on this statement for the five years shows (in millions of dollars):

	Total 1971-1975	Annual Average 1971-1975	Annual Average Percentage
Premiums earned	\$2,753.3	\$550.7	100.0%
Claims incurred	\$2,125.0	\$425.0	77.2%
Commission expense	386.7	77.3	14.0
Premium tax	57.3	11.5	2.1
General expense	405.1	81.0	14.7
Investment and other income	(260.2)	(52.0)	(9.4)
	2,713.9	\$542.8	98.6%
Profit before income taxes	\$ 39.4	\$ 7.9	1.4%

and indicates, for this period, that:

1. Of every \$1.00 of premium earned by the industry, 77.2¢ was used to settle and adjust claims. While information concerning adjusting costs is not reported separately, it is estimated, based on periodic analyses conducted by the industry, that about 11¢ of the 77.2¢ would cover these costs. Thus, about 66.2¢ of each premium dollar was used in settlement of claims including actual loss compensation, O.H.I.P. and reimbursement of claimants' legal expenses.
2. Expenses that are identified as "commissions" in the reports to the Superintendent account for 14¢ of each premium dollar. In addition

1. See Appendix K

to these commissions, total marketing expenses would include the costs of advertising, salaries paid to company sales staff and other selling expenses. No industry-wide breakdown of these latter expenses is available and therefore the portion of the premium paid by the industry for “selling” existing and potential policyholders cannot be determined.

3. A premium tax is levied on the basis of total premiums written by insurers. In the years 1971-1975, this tax was at the rate of 2% of gross premiums written and translated into 2.1¢ of each premium dollar earned by the industry. The rate of premium tax was increased to 3% on April 1, 1976. The total amount of this tax in 1976 amounted to approximately \$24 million.
4. General expenses, the “catch-all” for expenses not specifically identified elsewhere, absorbed 14.7¢ of each premium dollar. In addition to the costs of administering the overall operations of insurance companies, “general expenses” would include marketing expenses (except commissions) and claims-handling expenses other than those specifically identified as adjusting expenses and grouped with claims incurred.
5. The foregoing costs were offset by investment and other income equivalent to 9.4¢ for each \$1.00 of premiums. This reduced net costs and expenses to 98.6¢ and left a profit before income taxes of 1.4¢ for each dollar of premiums earned.
6. As an approximation based on the overall experience of the industry, the rate of income taxes would take 1/3 of the 1.4¢ leaving only slightly more than 9/10 of 1¢ of each premium dollar for the owners as a return on their investment and to finance future growth.

Appendix L to this Report contains summary balance sheets as at December 31, for each year from 1971 to 1975, and statements of surplus and income for the years then ended for all lines of business conducted by property and casualty companies reporting to the Ontario and Federal Departments of Insurance. From these statements the following summary has been prepared (000's omitted):

Year	Average ¹ Capital and Surplus (Equity)	Profit (Loss) before Income Taxes	Pre-tax Return ² on Equity
1971	\$ 949,810	\$153,277	16.1%
1972	1,099,299	149,886	13.6
1973	1,184,871	78,168	6.6
1974	1,146,316	(32,811)	(2.9)
1975	1,228,979	140,005	11.4
5 year average	1,121,855	97,705	8.7

Notes:

1. Average of Equity at beginning and end of the year.
2. Profit (Loss) before income taxes divided by Average Capital and Surplus.

Property and casualty insurers do not segregate assets or liabilities (other than unearned premiums and certain reserves for outstanding claims) by lines of business written or by province (if they are doing business nationally), nor do they prepare separate statements for the automobile segment of their operations in Ontario. For these reasons it has been necessary to estimate the capital and surplus (equity) applicable to the Ontario automobile insurance industry. Based on the ratio of automobile premiums to total premiums, the following table shows estimated capital and surplus figures for the automobile industry in Ontario for the years 1971 to 1975 (000's omitted):

Year	Average Capital and Surplus (Equity)	Profit (Loss) before Income Taxes	Pre-tax Return on Equity
1971	\$224,155	\$ 36,082	16.1%
1972	261,633	19,134	7.3
1973	264,226	(16,861)	(6.4)
1974	288,872	(5,988)	(2.1)
1975	309,703	7,035	2.3
5 year average	269,718	7,880	2.9

The two preceding tables indicate that in the years 1971 to 1975 the pre-tax return on equity earned by property and casualty insurance companies reporting to the Ontario and Federal Department of Insurance on all their business was 8.7 percent but on their automobile insurance business in Ontario was only 2.9 percent.

The relative profitability of these two groupings of the property and casualty insurance businesses is also indicated in the following recapitulation of losses before investment income and taxes on income.

	1971	1972	1973	1974	1975
All lines of insurance	\$(5,351)	\$(35,224)	\$135,678)	\$(277,006)	\$(135,776)
Automobile-Ontario	\$(1,354)	\$(24,922)	\$(64,549)	\$(67,526)	\$(62,462)
Automobile-Ontario as a percentage of all lines	25.3%	70.8%	47.6%	24.4%	46.0%
Automobile-Ontario net premiums written as a percentage of all lines	22.9%	23.5%	23.9%	24.8%	26.3%

While premiums on automobile insurance written in Ontario represented about 25 percent (22.9 percent in 1971 increasing to 26.3 percent in 1975) of the total of all lines in Canada in this five year period, its share of the losses was significantly higher, particularly in 1972, 1973 and 1975.

C. REPORTING TO GOVERNMENT

All companies writing insurance in Canada must report directly to at least one of the Provincial Departments of Insurance or to the Federal Department of Insurance.

Companies incorporated under Ontario law or licensed only in Ontario report directly to the Ontario Department. They are not required to report to the Federal Department.

Canadian companies incorporated federally (under The Canadian and British Insurance Companies Act), and British and Foreign companies with branch operations in Canada must report to the Federal Department. In addition, these insurers provide information and reports to the Ontario authorities. The Ontario Department, however, relies on the Federal Department to see that reporting and solvency requirements are met by Federal companies but expects to be kept informed of any delinquencies or deficiencies.

Reported Information Common in All Companies:

Much of the information required in the reports filed with either the Provincial or Federal Departments of Insurance is common to both jurisdictions. All companies must supply the following information:

1. Balance sheet or statement of assets and liabilities,
2. Underwriting account,
3. Details of investments owned by class of investment,
4. Supporting schedules giving detailed information on the various other assets and liabilities shown on the balance sheet,
5. Unearned premiums by class of insurance,
6. Additional policy reserves,
7. Assets not admitted,
8. Premiums and claims by class of insurance,
9. Expenses incurred,
10. Investment income and expenditures,
11. Other income and expenditures,
12. Reinsurance with affiliated companies and other reinsurance,
13. Premiums and claims by class of insurance by province,
14. Prior years' provisions for claims and the subsequent settlement of those claims as a test of the adequacy of the company's accrual for losses,

15. Solvency tests,
16. General information relating to such matters as the areas in which the company is licensed, directors, etc., and
17. Company affidavit as to the accuracy of reported information.

Other Information Reported to the Ontario Department:

In addition to the “common” list, the more significant reports required by the Ontario Department are:

1. Statement of profit and loss,
2. Combined statement of retained earnings, capital and surplus,
3. Test with respect to required minimum assets,
4. Test of net premiums written as a ratio of capital and surplus, and
5. Unearned premiums as a ratio of capital and surplus.

In addition, Ontario requires financial statements to be in comparative form.

Other Information Reported to the Federal Department:

In addition to the “common” list, the Federal Department of Insurance also requires additional reports including:

For Canadian Companies:

1. Underwriting account segregated from investment account, excluding other income and taxes which are recorded in a surplus account,
2. Test with respect to the adequacy of asset-liability ratio,
3. Test related to dividend restrictions, and
4. Determination of reserve for any excess of book value over market value.

For British and Foreign Companies:

1. Details of assets on deposit with the Receiver-General and a Canadian trustee,
2. As these reporting entities are only branch operations there is no capital or surplus information given. Only assets and liabilities are reported with the difference being a head office account. The head office account is not reconciled from year to year.
3. Detailed information relates to business transacted in Canada,
4. Test of adequacy of assets on deposit in Canada.

Accounting Principles Followed in Reports to Departments of Insurance:

Property and casualty insurance companies follow a set of accounting principles which in many ways is peculiar to their industry. Such accounting principles have evolved from legislation and practices and policies of the Department of Insurance and also of the industry which have stressed a solvency or liquidation approach to the valuation of assets and liabilities.

Generally, assets are recorded at conservative values. Further, the underlying concept is that only assets that can be converted relatively easily into cash will be included. As a result, furniture and fixtures, inventories of supplies, deferred premium acquisition costs and similar items which would normally be considered "assets" are not valued in the insurance industry but rather are written off to expense when acquired.

Because of these accounting principles and their effect on the reported earnings of insurance companies, a comparison of their earnings and return on investment cannot be made easily with companies in other industries.

D. SOLVENCY TESTS

To ensure that companies have sufficient tangible assets to meet their liabilities (particularly unpaid claims), the Provincial and Federal Superintendents of Insurance impose solvency tests. The tests used by the Province of Ontario and by the Federal authorities are summarized below:

Ontario Government:

The Ontario Superintendent of Insurance imposes the following tests:

(a) Required Minimum Assets:

The total admitted assets at market values must amount to at least 115 percent of total adjusted liabilities. To provide adequate protection for policyholders, it is considered necessary that an insurer incorporated in Ontario or licensed only in Ontario maintain assets that can be converted relatively easily into cash at 15% more than its liabilities including an adequate reserve for the business it may have ceded with unlicensed reinsurers.

(b) Net Premiums Written in Relation to Capital and Surplus:

The Department has an "in-house" rule (i.e. a rule of thumb) that the business a company can safely write should be limited to twice

its capital and surplus, that is to say, the shareholders' equity. This 2:1 premium to equity rule is designed to ensure a company's growth is adequately supported with an investment by its owners. In addition, rapid expansion of a company beyond the limits of the ratio would, regulatory authorities feel, mean it is accepting risks that are not conducive to future stability and liquidity.

(c) Unearned Premiums in Relation to Capital and Surplus:

Another "in-house" rule the Department applies is that a company's unearned premiums on a 100 percent basis, should not exceed its capital and surplus. This rule of thumb is a refinement of the 2:1 premium to equity ratio test.

The Insurance Act (Ontario) does not specify the solvency tests that companies incorporated in Ontario or licensed only in Ontario must meet. However, the "in-house" solvency tests are included in the Annual Statement Report which must be filed with the Superintendent of Insurance. If an insurer were deficient in any way the Department would require it to correct the deficiency as soon as possible. If the insurer were unable or unwilling to comply, the Department would recommend to the Minister that its licence be cancelled.

Federal Government:

The Federal Superintendent of Insurance imposes the following tests upon Canadian Companies:

(a) Required Minimum Assets:

The Federal tests are essentially the same as Ontario's for required minimum assets. However, in addition, the Federal Insurance Companies Act specifically requires that no dividends be paid to shareholders if there is a deficiency in assets.

(b) Dividends:

The Federal Act restricts the payment of dividends to common shareholders to 75 percent of the average profits of the preceding three years. This rule is designed to ensure that profitable companies retain a portion of their earnings to support future growth.

The Federal Superintendent imposes a specific test upon British and Foreign Companies. Since these companies only operate branch offices in Canada, they are required to keep on deposit with the Receiver-General and/or a Canadian Trustee, sufficient specified investment to cover their liabilities in Canada.

The Canadian and British Insurance Companies Act (Canada) provides legislative support for enforcement by the Federal Superintendent

of Canadian and British Companies. Failure to meet these tests or at least introduce and carry out a plan to correct the deficiency will lead to loss of registration.

The Foreign Insurance Companies Act (Canada) specifies that each foreign company operating in Canada must have sufficient defined securities on deposit with the Receiver-General and/or a Canadian Trustee to at least equal its outstanding liabilities. Deficiencies in the deposits must be covered within a specified period or the Superintendent of Insurance can request the Minister to revoke the registration of the company.

E. THE FINANCIAL IMPACT OF REINSURANCE

Reinsurance is a device which is used in all lines of insurance whereby an insurer reduces or shares the risk it incurs as a result of the business it does by making an arrangement to that effect with another insurer, called a "reinsurer". The insurer who issues a policy or a portfolio of policies may choose to protect itself by entering into a contract, (traditionally called a "treaty") with a reinsurer. Under the treaty, the insurer designates or "cedes" some part of its risk to the reinsurer who, on its part, agrees to "assume" that part of the risk. In return for assuming its agreed part of the risk, the reinsurer is entitled to receive an agreed share of the premium monies receivable by the insurer. There are three principal types of reinsurance treaties in use:

1. The Quota-Share Treaty (sometimes called a Pro-Rata Treaty): The insurer cedes a fixed percentage of all the business it writes in a pre-agreed class, such as automobile insurance, and the reinsurer assumes that percentage of the risk. As claims occur on all of the agreed class of business, the two parties share the loss on the pre-agreed basis. They also share all the premiums on a pre-agreed basis.
2. The Surplus Treaty: The insurer and the reinsurer enter into a treaty which provides
 - (a) that the treaty is to apply to a specific class of business such as fire insurance;
 - (b) that as the insurer writes each policy, it has the option of deciding
 - (i) whether to designate the policy as being covered by the treaty, and
 - (ii) if it is to be covered by the treaty, the percentage of risk to be ceded to the reinsurer, up to a certain pre-agreed maximum;
 - (c) that the reinsurer will be entitled to share in the premiums on designated policies in accordance with a pre-agreed formula; and

- (d) that the insurer will report the particulars of designated policies regularly, showing the percentages ceded and the division of the premiums.

For example, a fire insurer may make a surplus treaty with a reinsurer providing that fire policies may be designated up to, say two-thirds of the risk. Assume that the insurer writes a policy for \$200,000 and that it decides to cede 60 percent of the risk and to retain the remaining 40 percent. Then the premium will be collected and divided between the two parties according to the pre-agreed formula. Assume also that a loss occurs under that policy in the amount of \$100,000. The reinsurer will accept a loss of \$60,000 and the insurer will accept the remaining loss in the amount of \$40,000.

- 3. The Excess-of-Loss Treaty: The insurer cedes to the reinsurer all the risk involved in each policy over a fixed amount and the reinsurer assumes the excess of loss on any one occurrence up to a pre-agreed limit. The premiums receivable by the insurer are shared with the reinsurer on a pre-agreed basis. For example, an automobile insurer may write a portfolio of policies during the course of a year, none of which is to be for a higher third party limit than one million dollars. It may decide to retain the first one hundred thousand dollars of risk on each policy and to cede the balance of the third party liability risk on each policy to a reinsurer by way of an excess-of-loss treaty. When a loss arising from any one policy is ascertained, the insurer assumes the first one hundred thousand dollars of loss and is reimbursed by the reinsurer for any balance up to one million dollars.

In the automobile insurance industry, the use of reinsurance is limited almost exclusively to third party liability insurance since the ultimate loss can involve hundreds of thousands of dollars. Reinsurance is not usually obtained on accident benefits, collision or comprehensive coverage because each individual loss is relatively small.

In the case of third party liability insurance a guideline has been developed within the industry that an insurer normally will attempt to limit its risk, on any policy written, to 2 percent of its total capital and surplus. For example, if the insurer has capital and surplus of \$5,000,000, it will limit its exposure to liability on any automobile third party liability insurance policy to \$100,000 (i.e. 2 percent of \$5,000,000). Where this insurer insures an individual for \$500,000 of third party liability insurance, it will have an excess-of-loss treaty whereby a reinsurer will accept the excess liability for any claim over \$100,000 to the limit of the policy, which in this example is \$500,000. If the insured person is involved in an accident and the third party liability amounts to \$500,000, the original insurer will pay the \$500,000, accept \$100,000 as its cost and collect \$400,000 from the reinsurer.

When the treaty is initially entered into, the reinsurer will review the portfolio of automobile third party liability insurance policies which the insurer has written over a period of years, will review its loss ratio, etc. and will arrive at a rate which it will then charge the insurer on its net premiums earned for the specific "excess-of-loss" insurance which has been agreed upon. The treaty between the insurer and the reinsurer is usually negotiated only once but the rates to be charged by the reinsurer are normally re-negotiated annually.

Once the treaty has been finalized, the insurer remits to the reinsurer on a monthly or quarterly basis the pre-agreed percentage of net premiums earned in that period. In return, the reinsurer is bound to accept the pre-determined risk on any policy underwritten by the insurer. When a loss occurs that is large enough to be within the terms of the treaty, the insurer bills the reinsurer for its portion of the loss.

Most large insurers who belong to a group of companies, will collectively act as reinsurers within their own group. This essentially means that individual companies in the group will agree to share their losses proportionately to a higher dollar level than they could normally withstand if they were acting on their own. For example, the individual companies acting on their own might only be able to accept risks up to \$100,000. However by reinsuring the business proportionately within the group they may be able to extend their collective retention to \$200,000. They would then reinsure any further exposure over \$200,000 with other companies outside their group.

There are companies who operate as reinsurers only. This means that they only reinsure the business written by originating insurance companies and do not originate business directly with the consumer. These companies generally are international in their operations and this results in spreading their risks over as wide a geographic area and over as many types of insurance coverage as possible.

Originating insurers generally anticipate matching the premiums charged with the costs incurred over a short period of time, usually a year. In contrast reinsurers normally consider a much longer period than one year in which to realize their anticipated return on invested capital.

Reinsurance of All Lines of General Business in Canada

The Committee's consultants have summarized the direct premiums written and the reinsurance thereof from the individual company reports, for all lines of property and casualty business for all companies operating in Canada who report to the Ontario and Federal Departments of Insurance.

From this summary, the consultants measured the apparent net inflow to Canada of premium dollars as follows:

<i>For the five years 1971 to 1975</i>	(000's omitted)	
Total reinsurance ceded	\$6,319,335	
Total reinsurance assumed	6,173,555	
		\$145,780
Less: Claims on reinsurance ceded	4,013,802	
Claims on reinsurance assumed	3,902,794	
		111,008
		\$ 34,772
Less commission credited to Canadian operations for additional premiums ceded at, say 25 percent ¹ of \$145,780		36,445
Net inflow		\$ 1,673

This net inflow of funds of \$1,673,000 over a five year period amounts to an average of \$335,000 per year for all lines of general insurance written throughout Canada.

The Committee wishes to issue a caveat. The foregoing information must not be uncritically accepted as an assurance that there is no outflow of funds from Canada under the umbrella of reinsurance. The above table contains only the reinsurance assumed and ceded by federally and Ontario registered insurers in the insurance industry. However, and possibly very important, there is no requirement for British and Foreign branch operations to report the amount of their business that has been ceded to their home offices. As these branch operations are considered an integral part of their respective company operations, the reinsurance aspect of the business may be handled almost exclusively by the home offices. The Federal Department of Insurance feels it is impractical at this time for such branches to report this information. The Committee has instructed its staff to investigate this matter further and to report back. The Committee intends also to consider further the question of reinsurance commissions in its forthcoming sessions.

1. The rate of commission credited by a reinsurer to an insurer forms a part of the treaty between them. It is understood that a rate of commission of 25 percent would represent an average or norm.

Summary of Automobile Reinsurance Premiums and Claims Incurred in Canada.

A summary of automobile premiums reinsured and the related claims incurred for all companies operating in the automobile insurance industry in Canada who report to the Ontario and Federal Departments of Insurance follows:

**SUMMARY OF AUTOMOBILE REINSURANCE PREMIUMS
AND CLAIMS INCURRED IN CANADA**
(in 000's of dollars)

Year	Reinsurance premiums earned		Reinsurance claims incurred		Percentage of Reinsurance claims to premiums	
	Assumed	Ceded	Assumed	Ceded	Assumed	Ceded
1971	\$ 474,105	\$ 460,734	\$ 298,827	\$ 305,638	63.0%	66.3%
1972	516,597	495,600	339,304	336,963	65.7	68.0
1973	569,815	540,490	399,840	393,987	70.2	72.9
1974	593,626	575,237	431,247	431,619	72.6	75.0
1975	824,357	812,965	529,253	513,022	64.2	63.1
	\$2,978,500	\$2,885,026	\$1,998,471	\$1,981,229	67.1%	68.7%

Year	Total Retained Premiums Earned		Total Retained Claims Incurred		Percentage of Total Retained Claims to Premiums	
1971	\$ 947,366		\$ 676,159		71.4%	
1972	1,033,564		770,905		74.6	
1973	1,044,385		903,037		86.5	
1974	1,204,129		991,843		82.4	
1975	1,408,219		1,042,523		74.0	
	\$5,637,663		\$4,384,467		77.8%	

Over this five year period there has been very little difference in the total automobile premiums assumed and ceded under the companies' reinsurance treaties in Canada. Further, the loss ratios for the business assumed and ceded are very close at 67.1% and 68.7%, respectively.

Over the same period of time, the automobile insurance premiums that have been retained by original insurers have incurred an average loss ratio of 77.8 percent to premiums earned. This loss ratio, when compared to the same ratios for reinsurance premiums assumed and ceded, suggests that the reinsured business has been more profitable. However, since

a significant portion of the reinsurance is within company groups in Canada there is no apparent significant net outflow of earnings being passed directly outside the country through reinsurance of automobile premiums.

F. CAPACITY OF THE CANADIAN PROPERTY AND CASUALTY INSURANCE INDUSTRY

Introduction

In a manufacturing operation, capacity is a tangible concept, being the maximum productive output of the available physical resources (plant, equipment, labour force) within the current state of available technology. Due to the significant lead time required to bring new facilities into production, the capacity in the industrial environment is relatively fixed and changes only gradually.

The borders defining the capacity of financial institutions, however, are much less precise and generally reflect regulatory restrictions designed to protect depositors or customers. The regulatory restrictions in most cases provide for a capacity determination based on the relationship of liabilities to equity capital. Any factors affecting the amount of equity capital available to a company, industry or country will have a direct effect on its resultant capacity.

The capacity of the Canadian property and casualty industry is not a precise concept, but can best be defined in terms of the operating guidelines applied by the Federal and Provincial Departments of Insurance responsible for regulation of the industry.

Regulatory Restrictions on Capacity

The benchmarks of capacity in the Canadian property and casualty insurance industry are the solvency rules applied to the financial position of the companies by the Federal and Provincial Departments of Insurance. Such tests are designed to ensure that companies have sufficient net assets (plus a reasonable margin of security) to meet their present and future liabilities in respect of the volume of net insurance written. In substance, these tests provide for a relationship between the maximum volume of insurance that may be written by a company and its adjusted equity capital. The solvency tests currently followed in Canada are discussed in detail in Appendix M to this Report and commented on briefly below. For ease of description the calculations described present a simplification of the actual detailed ones required in practice.

Canadian Companies

(a) Minimum Assets

This test requires that assets at market value must be equal to 115 percent of liabilities. Stated in other terms, to provide a cushion for the protection of policyholders, shareholders' equity must be retained in an amount equal to 15 percent of liabilities.

The estimation process involved in determining unearned premiums and liabilities in respect of claims in the process of settlement requires may be debatable, it would appear that, historically, 15 percent has been adequate and in most instances not excessive.

(b) Unearned Premiums to Equity Capital

This test requires that at any one time, equity capital must be equal to unearned premiums (extended at 100 percent).

Premiums charged to policyholders represent a company's best estimate as to the amount required to cover underwriting and administrative expenditures and the insurance risk (being the likely claims costs) for the period insured. Provided the original estimates were reasonably accurate, the unearned premium balance is a good indication of a company's exposure in terms of outstanding insurance risks accepted. Accordingly, it is appropriate to measure solvency with respect to outstanding risks accepted by comparing the ratio of unearned premiums to equity. A one-to-one relationship between equity and unearned premiums has developed as an historically accepted ratio for measuring the degree of risk which a company should be allowed to accept.

(c) Net Premiums Written to Equity Capital

The volume of business that can be safely written by a company in a year is measured by the solvency test that requires that net premiums written in a year should not exceed twice the equity capital at the beginning of the year.

This test is a further refinement of the unearned premium rule and attempts to compensate for the wide variation in unearned premium balances that could result from varying policy terms or payment terms. An extreme example of this variation would be the situation of a company which collected policy premiums on a monthly basis. This company could consistently maintain a relatively low unearned premium balance while having an amount of insurance coverage in force well beyond an amount that might be considered prudent based on the safety margin provided by existing equity.

British and Foreign Companies

British and Foreign companies operating branch offices in Canada are not subject to the above solvency tests, but must keep on deposit with the Receiver-General or a Canadian Trustee, investments equal to their liabilities in Canada.

Expansion of Capacity

Within the constraints imposed by the regulatory guidelines respecting solvency, the prime determinant of capacity expansion is the growth

in equity capital of insurance companies operating in Canada. This growth may be achieved in the following ways:

- (a) new capital injections (either by shareholders, new investors or by foreign companies operating in Canada), and
- (b) retention of earnings in the business after providing for adequate returns to shareholders (or foreign parent companies) by dividends or capital distributions.

Increases in equity capital through either of the above ways will only occur if the property and casualty insurance industry is earning an "adequate" rate of return. The industry will only be able to attract new capital if its rate of return is perceived by investors as being adequate in comparison with alternative investments of similar risk. In the case of foreign companies, increased investment in Canada will only result if the profit opportunities appear greater than in domestic or other foreign markets. In some instances, even where the opportunities in Canada appear greater, difficulties encountered in domestic markets may hamper the foreign parent's ability to free up sufficient capital for investment in Canada.

Recent Changes in Capacity

The changes in equity of all property and casualty insurers, reporting to either the Federal or Ontario Departments of Insurance, for the years 1972 to 1975 are summarized as follows:

	1972	1973	1974	1975	Total 1972-1975
	(\$,000's)	(\$,000's)	(\$,000's)	(\$,000's)	(\$,000's)
Closing Equity	\$1,153,954	\$1,215,787	\$1,076,845	\$1,381,113	\$1,381,113
Opening Equity	1,044,643	1,153,954	1,215,787	1,076,845	1,044,643
Total Change in Equity	\$ 109,311	\$ 61,833	\$ (138,942)	\$ 304,268	\$ 336,470

Average annual increase 7.5%

As can be seen from the foregoing, equity of property and casualty insurance companies and therefore capacity, only increased at an annual average rate of 7.5 percent in the four years ended December 31, 1975. Of this net increase, a portion is represented by new capital investments by shareholders or foreign parent companies. While investors and parent companies may have been willing to finance expansion in the short run, it is unlikely that they would be either willing or able to do so in the longer term without significant improvements in the industry's rate of return on capital. Therefore, if significant expansion of capacity is required over the next decade, it is important that a greater portion be met by internally generated funds. This can only be achieved by improvements in the

industry's rate of return on investment. A comparison of recent rates of return on investment between casualty insurers and manufacturing and other financial sectors is included in the report on the financial structure of the industry in Appendix M.

Demand

Industry capacity only becomes a problem when demand for insurance exceeds the companies' ability to provide the coverage and still meet the requirements of the solvency tests. Due to the mobility of the industry's ability to provide insurance coverage both between international and national markets and between various lines of insurance it is virtually impossible to determine overall demand and make an assessment as to the likelihood of there being sufficient capacity available to meet this demand. It is, however, worth while to consider briefly some of the factors affecting market demand:

(a) Growth in Insurable Assets or Risks of Loss

As the physical volume of insurable assets increases, so does the overall demand for insurance coverage. If standards of living are to be maintained in Canada, this growth factor would appear to be somewhat related to the rate of population growth and economic expansion.

(b) Inflation

In periods of rapid inflation, the replacement cost of insurable assets and the resultant dollar demand for insurance increases rapidly. This problem becomes compounded when in an inflationary period significant time lapses between incidence of loss and settlement by an insurance company.

(c) Changes in Judicial Awards

Where insurance is provided for personal injury or professional liability the resultant demand is particularly susceptible to increases in the level of judicial awards. Generally, these awards reflect both changing social values respecting appropriate compensation for injury or loss and expectations as to future rates of inflation.

(d) Government Involvement

When governments become directly involved in providing various forms of insurance coverage, the remaining demand that must be satisfied by the private insurance industry is reduced. In Saskatchewan, Manitoba and British Columbia automobile insurance coverage is provided under government operated plans filling a demand that would otherwise have to be met by private insurance companies.

(e) Incidence of Loss

One of the most significant factors affecting market demand is the incidence of events resulting in loss claims under insurance policies. To the extent that improved technology in building, auto safety, etc. or changes in laws such as speed limits and seat belt legislation either reduce the frequency or severity of losses, the claims cost in relation to dollar of coverage provided is correspondingly reduced. The result is a direct reduction of market demands placed on insurance companies as a larger dollar value of assets can be insured with no overall increase in insurance risk.

Growth in Market Demand and Capacity — Ontario Automobile Insurance

While, as stated earlier, it is impossible to relate the total demand for insurance to total capacity, it is nevertheless, possible to review one market and line of insurance and determine the capacity, in terms of insurance companies' equity, required to service that market and line. The following is a simplified projection of the Ontario *private passenger* automobile insurance market and the growth in equity required to service this market.

PROJECTED PREMIUMS WRITTEN — 1980 (Based on Growth in Number of Policies 1971-1975)

Type of Coverage	Premiums Written 1975 (\$,000's)	With 0% Annual Inflation (\$,000's)	With 6% Annual Inflation (\$,000's)	With 8% Annual Inflation (\$,000's)	With 10% Annual Inflation (\$,000's)
Bodily injury and property damage	\$334,579	\$429,934	\$575,349	\$631,714	\$692,412
Accident benefits	35,160	45,180	60,461	66,384	72,763
All perils	9,454	8,225	11,007	12,085	13,246
Collision	140,278	194,986	260,935	286,498	314,027
Comprehensive	40,440	57,080	76,385	83,869	91,928
Specified perils	724	594	795	874	957
	\$560,635	\$735,999	\$984,932	\$1,081,424	\$1,185,333
Equity required to provide coverage and satisfy 2:1 premium/equity solvency test	\$280,318	\$368,000	\$492,466	\$540,712	\$592,667
Percentage annual equity growth required to attain necessary level		5.6%	11.9%	14.0%	16.2%

This analysis is an attempt to illustrate the impact of growth in number of vehicles and inflation upon the demand for private passenger

automobile insurance. For the purposes of these projections it has been assumed that all other factors such as claims frequency and severity, levels of minimum deductibles, etc., remain unchanged from recent historical patterns. If growth in the number of vehicles is maintained and the rate of inflation over the next five years averages 8%, the equity required to sustain this growth in premiums written must increase at the rate of 14% Per annum. As previously noted, total equity of property and casualty insurers operating in Canada only increased at an annual rate of 7.5% in the years 1972 to 1975. Due to constraints of the Federal government's anti-inflation program on profits, even this level of increase in equity will only be achieved if owners are willing to invest substantial additional capital.

CONCLUSIONS AND RECOMMENDATIONS

1. The Committee's consultants found that data concerning the insurance business in Ontario was not readily available. For example, the Superintendent of Insurance summarizes in his annual report only the names of companies licensed to write automobile insurance and limited information concerning premiums written and claims incurred. While the Committee's consultants reported that they believed satisfactory controls were in place, it was somewhat surprising that more information was not available concerning a business which has such high annual revenues in this province. **The Committee recommends** that more detailed data be reported to the Superintendent with regard to the automobile insurance business done in Ontario as distinct from other lines of casualty and property insurance. This should be sufficient to ascertain whether policyholders in Ontario are subsidizing or are being subsidized by automobile insurance policyholders in other provinces and whether automobile insurance is subsidizing or is being subsidized by other lines of property and casualty insurance. This should be accomplished primarily by the filing of detailed information on a line-by-line basis and on a province-by-province basis.

2. The Committee has had an opportunity of reviewing the solvency and liquidity rules that are applied to the industry by the Office of the Superintendent, and the way in which they are enforced in practice. The Committee has also been able to learn at first hand about the abilities of the senior personnel of that Office. **The Committee has concluded** that the Province of Ontario is well served in having an extremely competent and dedicated Superintendent and senior staff and the Committee would like to express the fact that it has full confidence in them. The industry with which they deal is a very complex one as the Committee has found, and it is very fortunate that the province has, in the person of Mr. Murray A. Thompson, Q.C., a Superintendent who has dedicated his entire career to the regulation and supervision of the insurance system and other financial institutions.

3. The Committee is nevertheless concerned as a result of its review of solvency and liquidity tests to find that the authority for key tests is based primarily on the force of long-established custom and practice built up over many years in the Office of the Superintendent. These rules which find their sanction in tradition and custom have come to be referred to as “in-house” rules. There is generally little or no sanction by way of legislation or regulation to support them. **The Committee recommends** that any necessary review and study of existing rules as to solvency and liquidity be carried out immediately by the Superintendent’s Office in conjunction with the Committee’s staff and that they report back to the Committee during the current year on the results of such studies. The Committee will then recommend the enactment of such enabling legislation as may be necessary so that regulations can be passed to give such rules as are settled upon the proper force of law. The Committee wishes to add that its tentative view is that the present rules appear to be unnecessarily conservative.

4. The Committee is also concerned that the present Act puts the Superintendent in the position of being, in a sense, legislator, prosecutor and judge in certain circumstances. A specific example of this occurs in Part XVIII of the Act where the Superintendent, by the making of “in-house” rules, is able to some extent to determine what constitutes unfair and deceptive acts and practices in the business of insurance. His Office is then authorized to investigate persons engaged in the business of insurance to determine whether they are involved in such a practice. The Superintendent is also empowered to hold hearings, to make decisions and to issue stop orders.

The Committee recommends that the Superintendent no longer be put in the position where he or his officials appear to be legislator, investigator, prosecutor and judge in relation to their supervisory and regulatory function. To effect this the following steps should be taken:

- (a) **The Committee has already recommended** that all rules applied by the Superintendent in relation to solvency, liquidity, standards of conduct, etc., be enacted in legislation or promulgated in regulations.
- (b) **The Committee further recommends** that any order made by the Superintendent should be subject to appeal. Such appeals should be to the Commercial Registration Appeals Tribunal on questions of fact and to a judge of the Supreme Court on questions of law.
- (c) **The Committee further recommends** that the Superintendent be given the power to issue stop orders in cases of emergency, which orders should continue in force until the final hearing has taken place.

5. The Committee has found that the practice in the preparation of financial statements by insurance companies is to follow a system of accounting principles that is based on the requirements of the government regulations that are applicable to the companies, where those regulations are inconsistent with generally accepted accounting principles followed generally in other fields of business and industry. The Committee has concluded that the result of this practice is that the financial statements of the companies may be confusing to persons who are studying them, particularly to those who are not specialized in insurance matters. **The Committee therefore recommends** that property and casualty companies, including particularly those who deal in automobile insurance be required to publish their financial statements on the basis of generally accepted accounting principles. Where it is necessary because of the requirements of the regulatory agencies to publish additional statements based on regulatory principles, it should be sufficient for the companies to publish reconciliations showing reasons for the differences between the two types of statement.

6. The Committee has noted that federal legislation appears to favour the branches of foreign companies operating in Canada in that:

- (a) While companies incorporated in Canada must maintain assets equivalent to 115 percent of their liabilities, branches of foreign companies are required to keep on deposit with the Receiver-General and/or a Canadian trustee sufficient investments equal only to 100 percent of their liabilities in Canada, and
- (b) Branches of foreign companies are not required to present complete financial statements or to have an audit certification as part of their reporting package, although these requirements apply to companies incorporated in Canada. The Committee requests that the Office of the Superintendent, in cooperation with the Committee's consultants, confer with the federal authorities and report back to the Committee as to whether the Committee should request a change in federal requirements so that branches of foreign companies will be treated in the same way that Ontario companies and other Canadian companies are treated.

7. The Committee initially had difficulties in evaluating the operations of automobile insurance companies because of confusion that exists in the use of the term "profit" by the industry to mean various things in various contexts. It was apparent that this confusion also existed in the public mind and contributed to a certain suspicion that ought to be dispelled. The following propositions are accordingly set down in the hope that they will clarify the matter:

- (a) A company's "equity" consists of the share capital that has been invested in the company plus the surplus that the company has built up over preceding years.
- (b) The term "profit on equity" refers to the entire net profit after taxes that a company earns from its entire enterprise as a result of the uses that it makes of its equity.
- (c) In evaluating an insurance company's profit on its equity, regard should be had for the profits from its entire enterprise, as a result of the way in which its equity is employed, exactly in the same way in which any other company's performance is evaluated.
- (d) Insurance companies have two sources of profit:
 - (i) the "underwriting profit" which they earn as a result of insuring their policyholders, and
 - (ii) the "profits on investments" or "investment income" which they earn.
- (e) "Profits on investments" or "investment income" is derived from the investment of funds from two sources:
 - (i) money received from policyholders in advance and held in investments until it has to be paid out at some time in the future to settle claims and to cover adjusting and administrative expenses; and
 - (ii) money that represents the equity of the company.
- (f) Industry statements about the prosperity, —or lack of prosperity,— of the insurance business repeatedly place the emphasis upon the "underwriting profits" and avoid reference to investment income. The result is to leave the impression with all but the most sophisticated members of the public that profits are as low, or as negative, as the figures as to underwriting profits or losses indicate. The truth, however, is that the health of the industry can only be evaluated accurately if one focuses on the companies' profits on equity from all sources, i.e. including investment income. The result of the way that the industry has adopted of publicizing only underwriting profits or losses has been to create a deep-seated skepticism amongst the public that does a disservice to the industry as well as to the public.

The Committee recommends that the industry be directed not to report to the public their underwriting profits or losses as distinct from their total profits on equity, unless a clear warning is included to the effect that the consideration of underwriting results in isolation from the entire profit-on-equity results is misleading.

CHAPTER 28

The Automobile Insurance Distribution System: Agents, Brokers and Sales Personnel

It is obviously essential to the operation of any system of automobile insurance that there be effective facilities to enable the public to purchase coverage with the maximum of convenience and promptness. It is also desirable that the personnel at the point of purchase are knowledgeable and helpful to the public so that decisions about the choice of coverage can be made intelligently; hence the importance of reviewing the present distribution system and the regulatory system that currently exists for the purpose of maintaining proper standards within that system.

The system of distribution that currently exists in Ontario involves four different types of dealers: “independent” agents, exclusive agents, salaried sales personnel and brokers.

Traditionally, general insurance has been distributed in Ontario through a broad network of “independent” agents operating in the cities and towns across the province. An agency generally consists of one agent or a group of agents operating together either in partnership or through the medium of a closely-held company. Agents seek out their clients from within the community in which they operate and they normally sell a broad range of general insurance, of which automobile insurance is but one line. Agents’ opinions in insurance matters are relied upon by their clients in varying degrees.

This reliance, or trust, carries with it a legal responsibility that has been recognized by the courts. In *Fine’s Flowers Ltd. v. General Accident Assurance Co. of Canada et al.* (1975) 5 O.R. (2d) 137, at page 143 ff., the Honourable Mr. Justice Fraser found that it is wholly unrealistic to say that an agent is acting gratuitously where the insured, who is getting insurance from him, is relying on his advice as to the company in which to insure, the coverage and particular type of policy and where the insured is paying a substantial premium from which the agent is to be paid his commission. He accordingly found that such an agent owed a duty of due care and skill to the insured and imposed liability upon the agent where there had been a failure to fulfil that duty.

“Independent” agents may deal with one, a few, or many different insurance companies for whom they act as agents pursuant to a continuing, non-exclusive agency agreement. It is because of this agreement that they are designated as agents, and they are accordingly agents of the insurer. Without any agency agreement, one ceases to be an agent and it

is because of the dependence that is therefore imposed upon the agents' relationships with their companies that it is inaccurate to refer to agents as being "independent" agents. However, agents describe themselves as "independent" partly to indicate that they are freer from company supervision than full-time employees of a company and that, in contrast to employed personnel, they are independent business men. It would be a mistake, however, to infer from the use of the term "independent" that agents are free to exercise any real objectivity because agents are dependent on their companies for the continuance of their agency agreements, if they are to remain in business.

"Independent" insurance agents are organized in Ontario into the Independent Insurance Agents and Brokers of Ontario (the "I.I.A.B.O.") an organization that would appear to be closely knit and very active in supporting the varied interests of its membership, including matters of continuing education. It is only fair to add that only a small minority, about 30 per cent of the licensed agents in the province, are members of this association. There appear to be relatively few brokers (in the technical sense of that term) within the ranks of the association.

Insurance brokers by definition carry on the business of representing exclusively those who are purchasing insurance coverage and act exclusively on the insured's behalf in dealing with insurance companies. Like the agents, they deal with virtually all lines of general insurance, and it would appear that there are no brokers limiting themselves exclusively to operations within the automobile insurance field. Unlike agents, however, brokers tend to be found principally in the larger cities where they generally are organized into larger business units. One unit operating in Ontario, Reed Shaw Stenhouse Limited, is reputedly the largest insurance brokerage house in the world, with a premium volume greater than that of many insurance companies. Unlike agents, brokers do not operate through agreements with insurers. They are usually paid, at least in the case of automobile insurance, by means of a commission based on a percentage of the premium, in the same way as the agent. The commission is ordinarily deducted as funds are received from the client for transmission to the insurer and to all outward appearances the procedure in this regard is identical to that followed by agents. Brokerage offices tend to be centralized in Toronto and they are represented principally by the Toronto Insurance Conference, although some are members of the I.I.A.B.O. The main function of the brokerage houses tends to lie in the arranging of more complex, specialized forms of insurance coverage outside the automobile insurance field. However, fleet policies and some individual policies are certainly of interest to the brokers.

Some insurance companies prefer to be represented by exclusive agents or by salaried, full time sales personnel. This is particularly the case with the larger companies such as Allstate Insurance Company of

Canada (salaried personnel), Co-operators Insurance Association of Guelph (salaried personnel) and State Farm Automobile Insurance Company of Canada (principally exclusive agents and partly “independent” agencies). The important characteristic in all these instances is that the sales people are trained by the insurer and carry out their responsibilities under a relatively closer degree of supervision by the insurer.

The trend in Ontario tends to be gradually in the direction of an increased use of exclusive agents and salaried, full time sales personnel as methods of selling automobile insurance and other forms of general insurance. In the first place, it appears that the larger insurers, the companies that are currently expanding most rapidly, consider that they can operate more efficiently through more fully trained and better supervised personnel. Secondly, they consider that their sales costs are minimized in this way. In the third place, the economies of scale that are available to larger business units, — computerization, record-keeping systems, specialization and the like, — are simply beyond the capacity of smaller business units such as the “independent” agent. And yet it seems clear that there will always be a need for smaller business units such as the traditional small insurance agency to serve the public, particularly in smaller communities.

A further trend that has recently developed involves direct mail solicitations and sales to groups such as Bell Canada personnel and the potential saving in marketing expenses would seem to indicate the likelihood of substantial expansion of direct sales and group programmes in the future.

Where automobile insurance is sold through brokers or “independent” agents, the commission payable is generally in the area of ten to fifteen per cent of the premium, twelve per cent being the prevailing rate. The following examples illustrate the commissions that would be payable:

	Approximate Premium	Commission
(a) Private passenger automobile, pleasure driving only, no driver 25 or under; \$100,000 third party liability; \$100 deductible collision; \$25 deductible comprehensive. (Commission 12 percent)	\$ 300	\$ 37
(b) Same example as (a) but principal driver is a male aged 21. (Commission reduced to 10 percent)	\$ 754	\$ 75

In return for this commission, the agent negotiates with the client and with the insured and also is responsible for the maintenance of a substantial record system and must pay the overhead that is incidental to

these activities. Commissions paid to exclusive agents are normally less, but their companies assume responsibility for some part of the overhead and other expenses.

The Insurance Act¹ provides a scheme of licensing for insurance agents and brokers carrying on business in the general insurance field. The Superintendent is authorized to issue to any person who has complied with the Act a licence authorizing such person to carry on business as an insurance agent or as an insurance broker. Anyone who assumes to act as an insurance agent or as an insurance broker without being duly licensed is guilty of an offence. Similarly the Superintendent is authorized to issue a licence authorizing a person to act as a salesman on behalf of an agent or broker and it is also an offence to act as such without a licence. However there is no licensing requirement for salaried sales personnel.

The Superintendent's power to grant, revoke or renew licences is the basis for a broad system of regulating insurance agents, brokers and their salesmen. The Superintendent has developed a system of examinations for applicants and a programme for requiring responsible conduct in the management of their businesses. It is apparent to the Committee that the office of the Superintendent has the co-operation of the I.I.A.B.O. in carrying out this supervisory function. In particular, that association is actively involved in the organization and conduct of educational courses, both for applicants for licences and also for the continuing education of licence holders.

The Committee has had a very full opportunity to examine the way in which automobile insurance is sold through the various channels described above. It has heard extensively from the I.I.A.B.O. through numerous presentations and briefs that were submitted in the course of sittings at Toronto and also at London, Sudbury, Kitchener and Ottawa. It has also received representations from the Toronto Insurance Conference, the companies and from individual agents and brokers. It has also received many submissions from members of the public who appeared before the Committee, including representatives of the Canadian Association of Consumers. It is worth noting that none of the many complaints that came before the Committee related to the sales system.

One recurring problem seemed at the early stages of the Committee's hearings to relate to the sales system. This was the problem of a chronic shortage of insurance availability and of choice-of-company in the lightly populated areas of the province, notably Northern Ontario. On further investigation, it became apparent that this problem was not the fault of the network of agents and brokers. Rather, it arose from an unwillingness on the part of the insurance companies to accept au-

1. Sections 342, 343 and 344.

tomobile insurance applications from such areas. The Committee found that many companies refused even to grant agency agreements in such districts. One response by the industry to the Committee's negotiations has been an increase in the availability of insurance in these areas and the Committee hopes that this improvement is permanent. **The Committee recommends** that if this problem should recur, the Superintendent should be granted full authority to take appropriate steps to rectify the situation.

In 1973 the then Superintendent of Insurance appointed Mr. Douglas H. Carruthers, Q. C., to report upon certain aspects of the insurance industry, including insurance agents and brokers. The Committee has had the opportunity of studying his reports and also of hearing from Mr. Carruthers in person. It has also heard from Professor Reuben Hasson, of Osgoode Hall Law School, York University, who propounded a critique of Mr. Carruthers' reports. Various bodies such as the I.B.C., the I.I.A.B.O. and the Toronto Insurance Conference have also provided the Committee with their comments on the reports.

Recommendations

The Committee makes the following recommendations with regard to agents, brokers and sales persons:

1. The Committee has considered the advisability of amending the Act so as to provide that salaried personnel who are engaged in the sale of automobile insurance should be licensed, just as agents and brokers are. After careful consideration, however, the Committee has concluded that this step is, under present circumstances, unnecessary in view of the fact that if such personnel act improperly, sanctions can be imposed directly on the insurance company that employs them.
2. The Committee has reviewed procedures for examining and granting licences to agents, brokers and their salesmen. The Committee has concluded that the examination standards should be raised in order to ensure that all entrants into this field are better qualified.
3. The Committee has examined the educational programmes being conducted by the I.I.A.B.O. **and recommends** that the Office of the Superintendent encourage these programmes and ensure that there is a maximum of participation in them by licensed personnel. This recommendation is as applicable to the continuing education programmes that are currently being conducted as to those education programmes that are of an introductory nature.
4. The Committee has considered representations as to the establishment of a self-regulating council made up of licensed agents, brokers and their licensed sales people for the purpose of regulating their affairs and

exercising disciplinary powers. **The Committee has considered this proposal** and does not agree with it.

5. The Committee has been concerned about the possibility of confusion in the minds of the public as to the obligation that “independent” agents owe to the public with whom they deal on the one hand and to the companies whom they represent on the other hand. The use of the term “independent” agent is clearly ambiguous in that it may leave the impression that the agent is acting on behalf of the applicant for a policy, whereas in fact he is really obligated in law to act as agent for the insurer or insurers whom he represents. **The Committee therefore recommends** the abolition of the term “independent” or any word of similar connotation so as to avoid any implication that those who are currently designated as “independent” agents are representatives of the consumer when they are in reality representatives of the insurance companies. The Committee also agrees that the term “broker” should be reserved exclusively for the use of those who elect to represent insurance buyers only and who do not directly represent insurance companies, even though their commissions may be paid out of the premiums which they collect and remit to the insurers.

6. Even after it is made quite clear by the abandonment of the term “independent” agent that agents are representatives of insurance companies, questions will still remain as to the standard of conduct that agents and salespersons owe to the public in the course of selling automobile insurance. The Committee has examined the provisions of Part XVIII of the Act dealing with unfair and deceptive acts and practices in the business of insurance. In Section 388, a list of nine classes of improper conduct are set out. (The provisions of this Part of the Act have already been dealt with in Chapter 15 in connection with the establishment of a Code of Conduct for Adjusters.) **The Committee recommends** that the Act be amended so as to authorize the passing of regulations on the recommendation of the Superintendent of Insurance, establishing a detailed list of specific practices or forms of conduct that should be deemed “unfair or deceptive” in connection with the sales process. Further details as to the way in which Part XVIII of the Act operates are set out in Chapter 15 and these would apply to a Code of Sales Conduct in substantially the same way as they would apply to a Code of Adjusting Conduct. The result would be the development of Codes of Conduct to cover both of the areas in which the consumer comes into contact with the automobile insurance system.

DISSENTING OPINION OF:

Larry Grossman, M.P.P.

James Renwick, Q.C., M.P.P.

We believe that all independent agents should be permitted to place insurance with all companies doing business in Ontario, and conversely all companies doing business in Ontario should be obliged to accept business brought to them by any licensed agent in Ontario. This would seem to us to be fair in view of the following:

This Committee is recommending better training and higher standards for agents. Agents would be licensed in accordance with and pursuant to this upgraded training. The companies are concerned that they would be obliged to deal with agents whose ability and practices are not known to the companies. Proper training and licensing should answer this concern.

The Committee has noted the concern about the dual role that the agent now plays in holding him/herself out as “independent” and yet being in fact the agent of the company. If all agents were permitted to write for all companies rather than few or several companies with whom that agent is licensed, then the agent could be truly said to be acting in more of a “broker” fashion. That is, the agent would not have to express or feel a concern about compromising his willingness to fight for an insured on a claim for fear of losing the right to do business with the insurer. This would then permit the agent to truly represent the insured on claims, place his insurance with any company, and to fight for that insured without compromise.

This Committee has expressed concern with regard to the ability of the consumer to compare prices and to ascertain and obtain the “lowest” price if he or she so desires. Permitting all agents to write for all companies would mean that the agent could and would canvass not the few companies in his “book”, but *all* companies. The agent could then provide that rate and policy without losing the client.

Insurance companies could not object to being forced to accept business from agents bringing them such business, because (a) with the Committee’s recommendation of compulsory insurance all persons in Ontario would be entitled to be covered by some company; and (b) the continuation and improvement of the Facility would permit any insurance company concerned about capacity or the risk to place that unwanted policy into the Facility.

The Committee has heard substantial evidence (and members have privately heard substantial evidence) of insurance companies threatening to withdraw from a contract with an independent agent (or in fact, withdrawing) for rather arbitrary reasons, including the advent of one

unusually large claim in one given year, or the provision of too much "Facility" business out of that agency. These abuses are, in our opinion, serious and cannot be eliminated other than by adopting the system that this dissent proposes.

For all these reasons, we dissent from the report of the Committee, and instead recommend that all licensed agents be permitted to write business for all companies, and that all companies, save and except those that are involved exclusively in direct writing, be obliged to accept business from all licensed agents.

PART VII
SUMMARY OF THE REPORT

CHAPTER 29

Conclusions and Recommendations

The following is a summary of the conclusions and recommendations that the Committee has reached, as set out in this Report.

PART I — Preliminary

Chapter 1. The Motor Vehicle System in Ontario

1. In order to appreciate the magnitude of the business of automobile insurance it is necessary to recognize the magnitude of the motor vehicle system which it services.
2. The number of licensed drivers in Ontario has increased to the point where 70 per cent of the population over 16 is licensed.
3. The growth in the number of motor vehicles has been even more rapid, so that there is now approximately one automobile per household in Ontario.
4. The Ontario road system now consists of some 97,780 miles of road and the use of these roads has increased because Ontario drivers are using their automobiles more frequently and they are going longer distances.
5. Driver action, rather than driving conditions, is the cause of most accidents. Driver involvement in accidents decreases as age increases, so that a greater percentage of sixteen-year olds are involved in accidents than sixty-five year olds. Accident frequency is highest in Toronto, with 66.4 accidents per thousand population against 27.7 accidents per thousand across the province.
6. There has been a continuous increase over the years in the overall number of accidents and in the losses that have been incurred. There has also been an increase in the accident rate per million miles travelled.
7. Total economic losses from motor accidents are immense, — well in excess of \$450,000,000 in Ontario in 1975.
8. The motor vehicle system constitutes an immense field for the automobile insurance system to service.

Chapter 2. The Role of Automobile Insurance in a Mobile Society

1. Society has developed a variety of responses in an effort to cope with motor accident losses. These include safety engineering for high-

ways, safety devices for automobiles, driver education programmes and law enforcement campaigns, all of which the Committee applauds.

2. However, so long as there are roads and automobiles there will be economic losses from accidents. As a result, there is no escaping the problem of how society should distribute, or share, motor accident losses. This is the fundamental concern of the Committee.

3. Our law has adopted negligence as the basis for imposing liability in motor accident cases. However, our society seeks to distribute this liability for economic losses from accidents by the automobile insurance system.

4. The automobile insurance system takes the loss which would otherwise fall on the negligent driver and distributes it throughout the insured driving community generally. This is the essence of our society's loss distribution system.

5. The Committee acknowledges and supports the basic principle of automobile insurance but it recognizes that there is a need for a great many practical improvements in the way in which our system of loss distribution actually works and this is the theme of this Report.

PART II — The Standard Automobile Policy

Chapter 3. An Overview of the Standard Automobile Policy

The policy governs the circumstances in which, and the extent to which the insurance system protects the public and distributes losses. The Committee therefore turned its first attention to the terms of the policy.

1. The policy should continue to be in a mandatory standard form, authorized by regulation, as currently provided for in the Insurance Act.

2. The policy should be completely rewritten so as to convert it into as clear, unambiguous and readily readable a document as its nature permits.

3. When the policy has been rewritten in a more acceptable form the Insurance Act should be amended to require the insurer to provide the insured with a copy of the policy rather than merely providing a certificate, as is the present practice. However, it should be necessary to do so only when the policy is first issued and when terms are changed. The mere act of renewing the policy should not necessitate the delivery of a further copy of the policy.

4. The present application provides that the insurer is not to be liable under its third party liability coverage for any loss or damage resulting

from bodily injury to or death of any occupant of an automobile (other than one of the private passenger, station wagon or bus type) if at the time of the accident more than three persons (exclusive of the driver) were occupants of the automobile. The Committee disapproves of this restriction and recommends that it should be deleted in its entirety.

5. The wording of Statutory Condition 4(5) should be amended so as to make it clear that, while the insurer is not liable for any more than the actual cash value of the insured automobile at the time loss or damage occurs, the reference to “actual cash value” is a reference to the *retail* price that would have to be paid to replace the automobile rather than the wholesale price at which the automobile could have been sold immediately prior to the occurrence of the loss or damage. Furthermore, the phrase “with proper deduction for depreciation” as set out in this statutory condition is redundant and should be deleted.

6. Statutory Condition 4(5) should be further amended to provide that the insurer is not to be entitled to call upon the insured to contribute toward the cost of repairs even though the replacement parts are of a greater cost or value than the replaced parts, unless the total effect of repairing the automobile is to increase significantly the actual cash value of the entire vehicle above its actual cash value prior to the accident.

7. The limitation period set out in Statutory Condition 6(3) should be extended from one year to two years.

8. Another limitation period related to motor accidents, which is little known, should also be extended. Section 267 of The Railways Act, R.S.O. 1950, (sic), Chapter 331 should be repealed and replaced with a two year limitation period rather than the current one-year period.

Chapter 4. The Application Form

1. The form of application for automobile insurance should be clarified and simplified and in particular certain items should be shown in the clearest terms:

- (a) that certain designated questions on the form are being asked for the purpose of classifying the applicant so that his premium can be calculated.
- (b) that the information required by the foregoing questions constitutes *all* of the information that may be taken into consideration in the calculating the applicant's premium. (Recommendations regarding the undesirable practice of using “subjective” information in the underwriting process are dealt with in Part III below).
- (c) The application should show the precise classification to which the applicant has been assigned for premium calculation purposes, and

exactly why he was assigned to that class, and that the premium that he is required to pay, is in fact the premium applicable to that class under the insurer's standard rate manual.

- (d) The applicant, if a married woman, should not be required to disclose her husband's occupation or business.
- 2. The termination date of the policy, as set out in the application form, should be subject to a ten-day grace period.
- 3. The application form should be made clearer by setting out in bold-face type in Item 4 that the only coverage provided by the policy is that for which a premium is specified on the face of the application and that there is no other coverage provided by the policy.
- 4. The policy should be clarified in order to make it quite clear that "carpooling" is permissible without the policyholder's rights being impaired in any way.
- 5. The application form should distinguish between those questions on it which relate to the absolute unwillingness of the insurer to accept the application and the questions that relate merely to the calculation of the premium amount. Each type of question should be clearly labeled to indicate separately consequences of incorrect answers.
- 6. Item 7 requiring particulars of all accidents, losses or claims within three years preceding the application should include the words "if known" so as to protect the policyholder in cases where accidents may have occurred without his knowledge.
- 7. Item 10 purports to warn the applicant as to the consequences of misrepresentation or breach of contract and yet the language is obscure. The Committee recommends that this intended warning should be phrased more clearly.
- 8. The application form should set out an acknowledgement by the insurer that it is its responsibility to apply the correct rating class to the insured and that it will calculate his premium accordingly and in his best interest.

Chapter 5. Policy Section A:

Third Party Liability Coverage

- 1. The policy contains a provision exempting the insurer from its obligations under third party liability coverage if an accident occurs while the automobile is used for towing an owned trailer not described in the policy, if the trailer is designed for use for passenger carrying, demonstration, sales, office or dwelling purposes. The insurer should not be exempted from liability under these circumstances and both the policy and the application form should be amended accordingly.

2. Additional Agreement (3). The policy provides that the insurer must pay interest on third party liability claims from the date of entry of judgment. Since the policy may have effect in some jurisdictions where interest is payable by law from some earlier date, this provision of the policy should be amended. The insurer should be required to pay all interest coming within its third party liability coverage.

Chapter 6. Unlimited Third Party Liability Coverage

1. The Insurance Act should be amended so as to provide that all third party liability coverage be increased from the present minimum limit of \$100,000 to an unlimited amount.

Chapter 7. Policy Section B: Accident Benefits Coverage

1. The Committee has decided not to make any recommendations at this stage in its proceedings as to the desirability of adopting an extended no-fault programme. At this time it proposes improvements in the present accident benefits coverage.

2. Accident benefits coverage provides for payment of benefits to cover all reasonable expenses incurred within four years from the date of the accident for necessary medical, surgical, dental, hospital, professional nursing and ambulance services and, in addition, all such other services as are essential for treatment or rehabilitation. This benefit currently has a maximum limit of \$5,000. This amount should be increased to \$25,000 per person. It should be made clearer that this benefit also covers payments for medical rehabilitation and occupational retraining necessitated by the accident. The Committee notes a substantial need in the province for adequate rehabilitation and retraining programmes and facilities for the assistance of those who are injured in automobile accidents.

3. The amount payable to cover the cost of the funeral of a person killed in an accident should be increased from the present amount of \$500 to \$1,000.

4. Death benefits in the case of persons killed in accidents should be the same for either spouse, irrespective of whether it has been the husband or the wife who has been killed. This benefit should be increased to \$10,000. In other cases the death benefit should be increased from the present amount of \$1,000 to \$2,000 where the deceased was five years of age or over and from the present amount of \$500 to \$1,000 where the deceased was under five years of age.

5. Total disability benefits which are currently \$35 per week maximum in certain circumstances and \$70 per week in other circum-

stances should be increased to \$70 per week and \$140 per week respectively.

6. The definition of “dependent children” should be broadened to include children of any age who are dependent for support because they are attending a school, college, or university.

7. The accident benefits coverage provides for payment of those expenses described in paragraph 2 above which are, in the opinion of the injured person’s *attending physician* and of the insurer’s medical advisor, essential for treatment or rehabilitation. Recommendations have been made to the Committee to the effect that the term “attending physician” precludes injured persons from seeking treatment by such practitioners as Christian Science healers, to whom some people turn for help because of religious conviction or other beliefs. The clause should be altered so as to refer to “the opinion of a physician of the injured person’s choice” rather than “the opinion of the injured person’s attending physician”. This will enable a person to take treatment from whomsoever he wishes and will involve him in dealings with a duly licensed physician for the sole and only purpose of obtaining the necessary information for determining his entitlement to benefits.

8. Total disability payments already referred to in paragraph 5 above, are provided while the injury “*wholly and continuously*” disables the injured person. These words were added in order to prevent the improper payment of benefits to persons who might be malingerers. However they have worked against honest people who have tried to go back to work only to find that they are unable to stay on the job. The provision should therefore be amended to provide that a person shall not be disentitled to benefits simply because he or she has tried unsuccessfully to resume employment.

9. “An insured person” is defined to include the spouse of a designated insured. This should be broadened so that it recognizes the relationship of “common-law spouses” in a way that is similar to the recognition that has been granted in the currently proposed Family Law Reform Act.

Chapter 8. Policy Section C:

Loss or Damage to the Insured Automobile

1. The provisions of Policy Section C—Loss or Damage to the Insured Automobile should be simplified so as to provide two types of coverage: collision coverage (which includes upset) and comprehensive coverage, which includes any other peril. There is no need for, and there should not be, any further alternative type of coverage under this section of the policy.

2. Loss of Use Benefits where an automobile is stolen should be increased from the current \$8 per day with a maximum of \$240 to \$12 per day with a maximum of \$360.

3. Persons engaged in the business of selling, repairing or servicing automobiles who have collision and/or comprehensive coverage for loss of or damage to an insured automobile are currently required to make necessary repairs at their own *actual* cost. This discriminates against such insured persons because they are thereby precluded from recovering their normal overhead expenses. This provision should be deleted.

Chapter 9. Minimum Collision Deductibility \$250

1. The minimum deductible for collision coverage should be fixed at \$250 and no collision coverage should be available with a lower deductibility feature.

2. Mr. John Ferris, M.P.P., one of the members of the Committee submits an opinion dissenting from this recommendation and recommends that

- (a) the minimum collision deductible should be \$100;
- (b) that the standard deductible be deemed to be \$250; and
- (c) that buyers of the \$100 collision deductible feature should pay premiums that are adequate to cover their share of the excessive adjusting and administrative expenses that they may impose on the automobile insurance system.

Mr. James Renwick, Q.C., M.P.P., and Mr. James R. Breithaupt, Q.C., M.P.P., concur in this dissent.

PART III — PREMIUMS

Chapters 10 to 14. Premiums

The Committee has studied the ratemaking and underwriting processes and has commented on them at length. Because of their complexity, the Committee has instructed its staff and consultants to prepare a detailed report on these and related problems so that the Committee can make more definite recommendations at the end of the second phase of its continuing studies of the automobile insurance system. For the present, however, the Committee has come to the following more or less tentative conclusions:

1. While it is not realistic to expect that existing premium levels can be reduced below their present level, it should nevertheless be possible to stabilize or minimize future increases in premiums.

2. The Committee has grave doubts about certain aspects of the classification system and has accordingly directed that its staff and consultants join with the Superintendent of Insurance and the industry to investigate further and to recommend a classification system that is entirely objective and actuarially sound. The Committee intends to recommend that such a classification system be adopted as mandatory for all automobile insurers in the province.

3. One of the Committee's areas of doubt in relation to the classification system concerns the present system of rating territories and the Committee will expect this topic to be reviewed with special care.

4. The Committee is also particularly concerned about present policies as to the high rates applicable to the under 25 age group. Even if further investigation indicates that the current high rates applicable to them are actuarially justified, the Committee nevertheless will consider recommending reduction of such rates so that they will not be prohibitive.

5. The principal criterion for a proposed new classification system will be its complete objectivity in contrast with the present underwriting practice of taking various subjective factors into consideration in deciding whether to write a policy. The Committee's intention is to recommend that this practice should be abolished. An applicant should then be judged on the basis only of the authorized criteria and he will be entitled to have his premium calculated accordingly and to be insured upon payment of that premium.

6. The Committee has been concerned about the policy of surcharging because of driver offence records. Its views are as follows:

- (a) To date, no satisfactory objective proof has been produced to indicate that a direct correlation exists between driver offences and accident proneness and the Committee invites submissions from those who believe that these factors are correlated.
- (b) Until such a direct relationship is proved, the industry should be prohibited from obtaining driver offence records and from using driver offence information for the purpose of surcharging policyholders.
- (c) The Committee recommends that immediate studies be instituted on this subject and that any relevant statistics from the Ministry of Transportation and Communications be made available, without identifying the specific individuals to whom such statistics relate.
- (d) The Committee's concern is that accident proneness is already predictable on the basis of driver accident records and this appears to be actuarially conclusive. By purporting to predict accident pro-

ness on the additional basis of driver *offence* records, it would appear that the industry is placing policyholders in a position of "double jeopardy".

- (e) If at a later date, sufficient proof is provided to satisfy the Committee that such a correlation exists so as to warrant surcharging, such surcharging should be permitted only on the basis of a scale approved by the Superintendent and also on the basis that the driving records of *all* policyholders be examined and assessed for this purpose.
- (f) The Committee's principal concern in this context is the present practice of surcharging the ordinary driver who happens to have some modicum of offences, as contrasted with the driver who is such a chronic offender that he is an obvious menace on the road. The problem created by the latter type of driver is dealt with in Chapter 20 which deals with Driver Review Boards.

7. The Committee was initially concerned about the large number of classes in the present classification system and felt that it would be wise to reduce the number of such classes for the sake of simplicity. After further deliberation, however, the Committee has concluded that the provision of an adequate number of properly devised classes within the classification system is essential. In the first place, it ensures that each driver is fairly classified with other drivers posing substantially the same risk to the insurance system. In the second place, the problem of "risk selection" or "creaming" is minimized if there are as many proper classes as is administratively practical. The Committee has therefore tentatively reached a view that an appropriate classification system should have sufficient diversity of classes to accomplish the objectives set out above. At the same time, it is important that the method of classifying a policyholder should be as clear and understandable as circumstances permit.

8. The Committee has been gravely concerned about the inadequacy of the present Facility to provide for the high risk driver and the residual market generally. To date the Committee has not developed a solution to this problem that can practically be imposed upon the industry. However, in view of the Committee's recommendation that third party liability insurance be compulsory, it is essential that the residual market be serviced by the industry. The Committee therefore wishes to state in the most categorical terms that it considers that the resolution of this problem is the responsibility of the industry and that it will expect the industry to submit a practical solution to the problem during the course of the Committee's forthcoming sittings.

9. With respect to accident-free bonuses the Committee is convinced that claims costs would be further reduced if policyholders who are

involved in motor accidents were encouraged in cases involving minor damage to pay their own losses as well as the claims made by others to whom they have caused damage. This can be accomplished by a much more effective use of the accident-free bonus system. The workings of this system were very apparent to the Committee during the course of its investigations in the United Kingdom. There, the accident-free bonus was constantly mentioned to Committee members by insured drivers, and a driver's accident-free bonus repeatedly appeared to be a matter of importance and a source of pride to the driver. It is true, of course, that under the rating system prevailing in Ontario, certain advantages accrue to policyholders who continue to be accident-free year after year up to five years.

However, the publicity given by the industry to this advantage appears to be quite inadequate. It is the Committee's conviction that very real savings could be effected in claims costs if far more advertising and publicity were focused on a clearly understandable accident-free bonus system. Indeed, this topic should be in the very foreground of the industry's advertising program and should be the most visible feature of application or invoice forms. In the first place it should result in a greater degree of care on the part of insured drivers. Secondly, and more significant, it should also result in insured drivers being prepared to settle minor losses themselves rather than reporting them to their insurers and leaving it to the insurers to absorb such losses. Under a realistic, thoroughly publicized accident-free bonus system, it would be obvious to insured drivers that it is more economical to settle minor losses oneself rather than suffer the loss of the accident-free bonus.

Under the present system, the failure to report an accident may be tantamount to a misrepresentation to the insurer and it will therefore be necessary to amend the terms of the application form and to make other corresponding changes in the law so that a driver who settles his own claims in the manner described would not suffer from an increased premium or from the threat of premium increases, policy cancellation or any similar reaction on the part of the insurer.

It has been suggested that the failure to report "self-adjusted" accidents might distort statistical records and driver classification procedures. The Committee is convinced, however, that the advantages that will accrue from the effective adoption of the accident-free bonus system will far outweigh any disadvantages.

More specifically, the Committee recommends the establishment of an accident-free bonus system which will have the following characteristics:

- (a) After five years with an accident-free record, an insured will be entitled to his maximum accident-free bonus and the insurer will

state on the face of every renewal certificate in capital letters and red ink the base premium, the total deduction by reason of the accident-free bonus and the net premium payable.

- (b) In the event of an insured entitled to such maximum benefit having a claim made against his insurer, he will lose one-third of his accident-free bonus in that year.
- (c) He will be entitled to regain the penalty loss if he has another accident-free year.
- (d) All policyholders will be encouraged to adjust at their own expense minor property damage accidents and shall not be penalized by their insurers if they fully pay such costs themselves.

10. With respect to investment income, the investment policies followed by general insurance companies are conservative and ultra-cautious, resulting in minimal investment returns which the Committee views with concern. This concern is especially strong in view of the fact that much of the funds available for investment consist of premiums paid by the public in advance. As the Committee has repeatedly indicated, the industry's yield from investments has a direct bearing on the premiums that it must charge and the Committee expects the industry to achieve substantially higher yields in the future. The industry should be aware that its hopes of minimal government intervention will best be served by a more effective investment policy.

11. The Committee also wishes to make it clear that it holds tentative views that the funds held by the industry from the public ought to be subject to some degree of direction as to the method in which they are to be invested, particularly so as to accomplish socio-economic objectives that are generally considered important within the community. The Committee believes that this can be done without in any way impinging upon solvency and liquidity rules.

12. With respect to rate regulation, the Committee is not prepared at this stage in its deliberations to recommend governmental rate regulation. However, last year's debate between representatives of the industry and of the Superintendent's office has drawn attention to the matter and the Committee intends to consider the question during the course of the current year.

PART IV — Claims

Chapter 15. Adjusters and Adjusting

1. The Committee disapproves of the use of the term "independent" in relation to adjusters.

2. The insurance company on whose behalf an adjuster operates should be entirely responsible for his conduct, just as it is responsible for the conduct of its full-time, employed staff. The system of licensing adjusters should therefore be abolished.
3. The provisions of the Insurance Act relating to unfair and deceptive acts and practices should be amended to provide that regulations may be made by the Lieutenant-Governor-in-Council, defining unfair acts and practices, including, without limitation, acts and practices related to the process of claim adjustment.
4. The Superintendent of Insurance should then assume the leadership in developing a code of conduct for those in the business of claims adjustment.
5. Claim charts, which are currently used in settling inter-company disputes about collision claims, should be redesignated as "collision assessment charts". These charts must only be used in the course of negotiations between the companies themselves and never in any way whatsoever in judicial proceedings.
6. The Act should be amended to provide that no insurance company may engage a foreign adjuster to adjust a claim in Ontario without the consent of the Superintendent.
7. The Act should be amended to prohibit corporations from acting as adjusters if they are controlled by non-residents of Canada.
8. Messrs. James E. Bullbrook, Q.C., M.P.P., John Ferris, M.P.P., James Renwick, Q.C., M.P.P., Marvin Shore, F.C.A., M.P.P., Gordon E. Smith, M.P.P., and James R. Breithaupt, Q.C., M.P.P. dissented from recommendations 1 and 2 of this chapter.

Chapter 16. Appraisal Centres

1. The government of Ontario should encourage the development of Drive-in Appraisal Centres such as that which has been established under the aegis of the I.B.C. in Kitchener, so that the entire automobile insurance system will be able to minimize repair costs and adjusting expenses.
2. The Superintendent should ensure that all insurers assume their fair share of the cost of the development of a network of Drive-in Appraisal Centres.
3. The industry should be instructed to give greater publicity to the benefits to policyholders that are inherent in the use of Drive-in Appraisal Centres and to explain that claimants are not charged for the use

of the Centres and also that if they wish to go elsewhere for an appraisal, they are free to do so at their own cost.

Chapter 17. Reducing Repair Costs — Automated Appraisal Systems

1. All necessary encouragement ought to be given to the adoption of an *automated* appraisal system as a supplement to the use of Drive-in Centres as recommended in Chapter 16 above. The Committee found the use of the Audatex automated system in Europe to be impressive.

Chapter 18. Reducing Repair Costs — The Thatcham Experience

1. The Committee recommends that a research centre similar to the Motor Insurance Repair Research Centre at Thatcham, England, should be developed and funded through the medium of the Insurance Bureau of Canada with the encouragement of the Superintendent of Insurance and with the co-operation of the automobile industry.

2. The proposed research centre should focus its attention upon the improvement of repair procedures, the development of more efficient repair equipment, the development and encouragement of the marketing of less expensive crash parts, the training of repair personnel and safety research.

Chapter 19. Medical Costs and O.H.I.P. Subrogation

1. A fundamental change should be made in the entire system whereby the Ontario Hospital Insurance Plan is reimbursed by the automobile insurance industry, because it is cumbersome and costly.

2. The “Statistical Plan” by which automobile accident statistics are compiled should be amended so that the amount of medical and hospital expense resulting from motor accidents can be ascertained. The total of such expenses should then be reported to the Superintendent of Insurance, who should also have the power to verify such amount if he considers it necessary to do so.

3. The Superintendent, having satisfied himself as to the total amount of such expense in any given year, should allocate that amount among all automobile insurers carrying on business in Ontario in the proportion that their share of automobile premium business done in Ontario in that year bears to the total of all such business.

4. Each such insurer should then be required to remit its allocated share of such expense to the Treasurer of Ontario to the credit of OHIP, promptly after receiving its assessment.

5. Upon the implementation of this program the present Subrogation Section should be disbanded.

*Chapter 20. Reducing Losses:
Driver Review Boards*

1. A Driver Review Board system should be established.
2. Cases should be referable to the Boards by the Registrar of Motor Vehicles, the courts, the police and the public.
3. Tests should be established to determine the circumstances under which a "bad" driver's license should be revoked.
4. The sole object of the Boards should be the protection of the community and not punishment, which should be left to the courts.
5. A Driver Review Board system will be of such complexity that the details of its organization and the criteria for its decisions must be spelled out as the result of a detailed further study which might be done by such persons as the Honourable J. C. McRuer or the Honourable G. A. Gale.

Chapter 21. Compensating the "Guest Passenger"

1. The present legislation that puts a "guest passenger" at a disadvantage in making a claim against his driver should be abolished. The guest passenger should not be required to establish "gross" negligence in order to be entitled to damages from his driver.

Chapter 22. Naming Insurers as Defendants

1. The law and practice of the courts of Ontario should be changed so as to provide that a plaintiff in any action for damages arising out of a motor accident shall institute his action not only against the other drivers and owners involved in the accident, but against their insurers as well. In uninsured driver cases the Motor Vehicle Accident Claims Fund should be named as a defendant in the same way as an insurer would normally be named.

Chapter 23. Inevitable Accident

1. The Committee has considered a proposal that the doctrine of "inevitable accident" be abolished. The Committee has rejected this proposal.
2. Messrs. Vernon Singer, Q.C., M.P.P., Bud Germa, M.P.P., Patrick Lawlor, Q.C., M.P.P. and Floyd Laughren, M.P.P. dissented from this conclusion.

PART V — Compulsory Third Party Liability Insurance

Chapter 24. The Principle of Compulsory Third Party Liability Insurance

1. The Committee recommends that every person who owns a licensed automobile be required to have a valid policy of automobile insurance providing third party liability coverage and accident benefits coverage.
2. Organizations and persons who have heretofore been “self-insurers” or who have not participated in the automobile insurance system as a result of religious opposition to placing faith in an insurance system, should nevertheless obtain insurance coverage so that the public is protected. The Committee believes that they will be able to make their own private arrangements with their insurers which will not compromise their principles.

Chapter 25. Enforcing Compulsory Insurance: The Irrevocable Policy

1. In order to ensure compliance with the compulsory insurance rule, the Committee has considered the advisability of recommending the adoption of a form of irrevocable automobile insurance policy. The Committee is of the view that such a policy may be the most effective method of enforcing compulsory automobile insurance and has referred the matter to its staff and consultants and will make further recommendations in its next report.

Chapter 26. Compensating the Victim of the Uninsured Driver: The Motor Vehicle Accident Claims Fund

1. The Committee is satisfied that the Motor Vehicle Accident Claims Fund must be retained.
2. The Committee recommends that the Fund employ full-time lawyers on its staff to act on behalf of the Fund and that outside lawyers be retained in only the most difficult cases.
3. The Motor Vehicle Accident Claims Act should be amended so as to authorize the settlement of claims involving infants who are only slightly injured, upon the receipt of an indemnifying release from the parents and without incurring the substantial costs of judicial proceedings to approve such minor settlements. This is in accordance with the practice generally followed in minor cases throughout the insurance industry.

PART VI—The Automobile Insurance Industry in Ontario To-day

Chapter 27. The Insurance Companies

1. The Committee recommends that more detailed data be reported to the Superintendent with regard to the automobile insurance business done in Ontario as distinct from other lines of casualty and property insurance. This should be sufficient to ascertain whether policyholders in Ontario are subsidizing or are being subsidized by automobile insurance policyholders in other provinces and whether automobile insurance is subsidizing or is being subsidized by other lines of property and casualty insurance. This should be accomplished primarily by the filing of detailed information on a line-by-line basis and on a province-by-province basis.

2. The Committee has been able to learn at first hand about the abilities of the Superintendent of Insurance and his senior representatives and has concluded that the Province of Ontario is well served in having an extremely competent Superintendent and staff. It would like to express its full confidence in them. It is very fortunate that the province has, in the person of Mr. Murray A. Thompson, Q.C., a Superintendent who has dedicated his entire career to the regulation and supervision of the insurance system and other financial institutions.

3. The Committee nevertheless is concerned as a result of its review of solvency and liquidity tests to find that the authority for these tests is based primarily on the force of long-established custom and practice that has built up over many years in the Office of the Superintendent. These rules which find their sanction in traditional custom have come to be referred to as “in-house” rules. There is generally little or no sanction by way of legislation or regulation to support them. The Committee recommends that any necessary review and study of existing rules as to solvency and liquidity be carried out immediately by the Superintendent’s Office with the Committee’s staff and that they report back to the Committee during the current year on the results of such studies. The Committee will then recommend the enactment of such enabling legislation as may be necessary so that regulations can be passed to give such rules as are settled upon the proper force of law. The Committee wishes to add that its tentative view is that the present rules appear to be unnecessarily conservative.

4. The Committee is also concerned that the present Act puts the Superintendent in the position of being, in a sense, legislator, investigator, prosecutor and judge in certain circumstances. A specific example of this occurs in Part XVIII of the Act where the Superintendent, by the making of “in-house” rules is able to some extent to determine what constitutes unfair and deceptive acts and practices in the business of

insurance. His Office is then authorized to investigate persons engaged in the business of insurance to determine whether they are involved in such a practice. The Superintendent is then empowered to hold hearings, to make decisions and to issue stop orders.

The Committee recommends that the Superintendent no longer be put in the position where he or his officials appear to be legislator, investigator, prosecutor and judge in relation to their supervisory and regulatory function. To effect this the following steps should be taken:

- (a) The Committee has already recommended that all rules applied by the Superintendent in relation to solvency, liquidity, standards of conduct, etc., be enacted in legislation or promulgated in regulations.
- (b) The Committee further recommends that any order made by the Superintendent should be subject to appeal. Such appeals should be to the Commercial Registration Appeals Tribunal on questions of fact and to a judge of the Supreme Court on questions of law.
- (c) The Committee further recommends that the Superintendent be given the power to issue stop orders in cases of emergency, which orders shall continue in force until the final hearing has taken place.

5. The Committee has found that the practice in the preparation of financial statements by insurance companies is to follow a system of accounting principles that is based on the requirements of the government regulations that are applicable to the companies, where those regulations are inconsistent with generally accepted accounting principles followed generally in other fields of business and industry. The Committee has concluded that the result of this practice is that the financial statements of the companies may be confusing to persons who are studying them, particularly to those who are not specialized in insurance matters. The Committee therefore recommends that property and casualty companies, including particularly those who deal in automobile insurance be required to publish their financial statements on the basis of generally accepted accounting principles. Where it is necessary because of the requirements of the regulatory agencies to publish additional statements based on regulatory principles, it should be sufficient for the companies to publish reconciliations showing reasons for the differences between the two types of statements.

6. The Committee has noted that federal legislation appears to favour the branches of foreign companies operating in Canada in that:

- (a) While companies incorporated in Canada must maintain assets equivalent to 115 percent of their liabilities, branches of foreign companies are required to keep on deposit with the Receiver-

General and/or a Canadian trustee sufficient investments equal only to 100 percent of their liabilities in Canada, and

- (b) Branches of foreign companies are not required to present complete financial statements or to have an audit certification as part of their reporting package, although these requirements apply to companies incorporated in Canada. The Committee requests that the Office of the Superintendent, in cooperation with the Committee's consultants, confer with the federal authorities and report back to the Committee as to whether the Committee should request a change in federal requirements so that branches of foreign companies will be treated in the same way that Ontario companies and other Canadian companies are treated.
7. The Committee recommends that members of the industry be directed not to report to the public their underwriting profits or losses as distinct from their total profits on equity, unless a clear warning is included to the effect that the consideration of underwriting results in isolation from the entire profit-on-equity results is misleading.

*Chapter 28. The Automobile Insurance Distribution System:
Agents, Brokers and Sales Personnel*

1. The examination standards applicable to the granting of licences to agents, brokers, and salesmen should be raised in order to ensure that all entrants into this field are better qualified.
2. The Committee has examined the educational programmes being conducted by the Independent Insurance Agents and Brokers of Ontario and recommends that the Office of the Superintendent encourage these programmes and work for their continued improvement.
3. The Committee has considered a proposal for the establishment of a self-regulating council for insurance agents and does not agree with it.
4. The Committee recommends the abolition of the term "independent" or any word of similar connotation by agents so as to avoid any implication that those who are currently designated as "independent" agents are representatives of the consumer when they are in reality representatives of the insurance companies.
5. The Committee recommends that the Insurance Act be amended so as to authorize the passing of regulations on the recommendation of the Superintendent of Insurance, establishing a detailed list of specific practices or forms of conduct which would be deemed "unfair or deceptive practices" in connection with the sales process.

6. Messrs. Larry Grossman, M.P.P., and James Renwick, Q.C., M.P.P., have presented a dissenting opinion in connection with this chapter, and have also suggested that all agents be permitted to write insurance for all companies doing business in Ontario.

CHAPTER 30

Topics for Subsequent Consideration

The Committee intends to resume its hearings in the course of the current year, immediately after the adjournment of the present sittings of the House. At that time it proposes to consider the following topics:

1. Investigation of Various "No Fault" Systems

The Committee will review the current status of no fault plans in other Canadian provinces, in various American states and in other jurisdictions in Europe and elsewhere.

The Committee will also consider the problems in the field of bodily injury and of property damage in their relationships to no fault systems and whether existing systems in other jurisdictions have resolved these problems.

It will also be relevant for the Committee to consider the impact of various no fault systems on premiums, on reparations, on the functioning of the courts and on other parts of the insurance system.

Included in the Committee's review will be a careful study of the Variplan that has been proposed by the I.B.C. and it will also consider cost projections relative to various no fault systems, including the Variplan.

2. Ratemaking and Underwriting

The Committee has expressed concern about the rating categories and the classification system that is presently in use by the automobile insurance industry in Ontario.

The Committee will review these matters with its consultants and with the Office of the Superintendent of Insurance in order to determine the extent to which the present system is actually valid.

In order to provide the Committee with a broader perspective, a review will be made of the classification systems and rating categories that are in use in other Canadian provinces, in various American states and elsewhere.

Of particular concern to the Committee will be the question of the validity of the present system of rating territories.

The Committee will be concerned to determine whether there is in fact such a correlation between driver offence records and accident proneness as to justify the use of some system whereby such records will

be reflected in the premium that are payable, either by way of a surcharge or some other mechanism.

Provisions will be considered for the revision of the Statistical Plan so as to provide the necessary statistical information for the purpose of implementing the Committee's recommendations regarding reimbursement of the Ontario Hospital Insurance Plan.

3. Compliance and Enforcement of Compulsory Insurance

The Committee has recommended the adoption of a system of compulsory third party liability insurance and it will conduct more detailed studies as to methods to be adopted to provide for adequate compliance and enforcement.

The Committee will also consider more detailed plans for the integration of the compulsory insurance system with the licensing system.

The Committee will also consider the more detailed implications that compulsory insurance will have in relation to the Motor Vehicle Accident Claims Fund.

4. Improving the Residual Market

The Committee has expressed its concern about the industry's methods of accommodating motorists in the residual market. Further studies will be done and recommendations made with regard to the operation of the Facility and alternative methods of dealing with this problem. Specific recommendations will then be made.

5. Review of Marketing, Administration and Claims Adjusting Costs.

Many questions have been raised by the Committee concerning further details about marketing, administration and claims adjusting costs as they apply to various types of coverage, various rating categories, various deductible limits and the various elements of claims adjusting costs.

The Committee will identify in detail major cost elements and will develop overall analyses of the costs of marketing, administration and adjusting claims.

6. Comparison of Private and Public Ownership

The Committee will seek to determine in detail the elements of public ownership of the automobile insurance business and how they vary from private ownership, with a view to making recommendations on this issue.

7. Reinsurance Reporting Requirements

The Committee has expressed a concern about the apparent lack of information available on reinsurance matters, particularly with regard to the branch operations of British or foreign casualty companies.

The Committee will consider recommending the enactment of requirements that would make additional information available with regard to reinsurance matters.

8. Solvency and Liquidity Rules

The evidence that the Committee has received to date is not conclusive as to the appropriateness of existing solvency and liquidity rules. It will therefore investigate this matter further with a view to evaluating the present rules and recommending modifications thereto.

The Committee will also recommend more detailed methods of incorporating “in-house” rules into statutes or regulations.

9. Foreign Company Branch Office Reporting

The Committee has found that only limited information is available on the financial transactions of companies operating in Canada through branch offices. The Committee proposes to review the present reporting requirements that are applicable to branch offices and it will identify possible changes that may result in giving a more complete picture of financial operations.

10. Government Presence in Rate Setting

The Committee will consider this topic more fully in the course of its forthcoming sittings. It will identify various systems in use in other Canadian and United States jurisdictions, such as rate setting, “file and use” systems, “use and file” systems, etc. The Committee will study the merits of each system with a view to making final recommendations on this topic.

11. Responsibilities and Operations of the Superintendent's Office

The Committee wishes to review in detail the extent of the present responsibilities and functions of the Superintendent's Office in order to ensure that they are appropriate in view of changes in the magnitude and in the regulatory requirements of the industries under the Superintendent's supervision. This matter will be considered in close collaboration with the Superintendent and his representatives.

APPENDICES

APPENDIX A (referred to in the Introduction)

The following witnesses have appeared before the Committee during the course of its investigations of automobile insurance. The Committee is most grateful to them and, as indicated in the Introduction, wishes to express its indebtedness.

Sittings in Toronto

Insurance Bureau of Canada

Mr. Daniel Damov, President;
Mr. Edward H. S. Piper, Q.C., General Counsel;
Mr. Alexander Kennedy, Staff Counsel;
Mr. Veljo Taht, Actuary and Chief Statistical Agent for Canada;
Mr. James W. Henderson, Chairman of the Claims Committee;
Mr. Douglas F. Cutbush, Member of the Claims Committee;
Mr. Warren Crawford, Chairman of the Automobile Committee and Vice-President Royal Insurance Canada; and
Mr. John R. A. MacKenzie, Member of the Board of Directors and also Chief Agent for Canada of the State Farm Insurance Companies.

Insurers Advisory Organization

Mr. Edward F. Belton, President;
Mr. Herbert J. Phillips, Chief Actuary;
Mr. J. W. McAllister; and
Mr. Arnold Rais, Actuarial Assistant.

The Facility

Mr. Robert Bethel, President
Mr. Ronald Walker and
Mr. John M. Matthews, General Manager.

The Independent Insurance Agents and Brokers of Ontario

Mr. Sanford F. Phillips, Past President;
Mr. Herbert F. Baker, Executive Director and General Manager.

Canadian Federation of Insurance Agents and Brokers Associations

Mr. Frederick Fenston, General Manager

The Toronto Insurance Conference

Mr. F. Peter Kendrick, President, and also Senior Vice-President of Marsh & McLennan Ltd., Insurance Brokers;
Mr. William E. Toyne, Member and President Tomenson, Saunders, Whitehead Limited, Insurance Brokers.

Canadian Independent Adjusters' Conference

Mr. William A. Hackett, Immediate Past President and President of W. A. Hackett & Co. Limited, Adjusters.

The Ontario Insurance Adjusters' Association

Mr. Bruce Job, Member of the Association and Claims Manager, The Wawanesa Mutual Insurance Company.

The Advocates' Society

Mr. Theodore H. Rachlin, Q.C., Chairman Insurance Committee and Partner of Rachlin, Wolfson & Malach, Barristers.

The Metropolitan Trust Company

Mr. Stewart Ripley

Royal Insurance Canada

Mr. Alan A. Horsford, Chief Executive Officer;
Mr. Vernon Frazier, Investment Manager; and
Mr. Alan Westbrook.

Co-Operators Insurance Association of Guelph

Mr. Tunis Haalboom, General Manager; and
Miss Margaret Chambers, Investment Manager.

State Farm Automobile Insurance Company

Mr. J. R. A. MacKenzie, Chief Agent for Canada, and
Mr. Clifford Fraser, Deputy Regional Director.

Allstate Insurance Company of Canada

Mr. Gerald Fournier, President; and
Mr. Ronald Walker, Director of Industrial Relations.

Warden Collision Service

Mr. Benjamin Smith, President.

The Ontario Risk and Insurance Managers Society

Mr. Donald Stuart, Chairman of the Legislative Committee and Risk Manager of Canada Packers Limited;

Miss Carol Caswell, Member and Risk Manager of Maple Leaf Mills Limited;

Mr. Gordon Hurd, Member and General Insurance Manager of Simpsons Limited and Simpsons-Sears Limited.

The Consumers Association of Canada

Mrs. Helen Anderson, Co-Chairman of the National Research Committee; and

Mrs. Barbara J. Shand, President of the Ontario Chapter.

The Honourable James C. McRuer, O.C., LL. D., D.C.L.,
Vice-Chairman of the Ontario Law Reform Commission

Mr. W. C. McBride,
Master and Taxing Officer of the
Supreme Court of Ontario

Mr. Elmer V. Sopha, Q. C.

Mr. Douglas H. Carruthers, Q. C., of
DuVernet, Carruthers, Barristers

Professor Nachum Biger,
School of Business Studies,
York University.

Professor Rubin Hasson,
Osgoode Hall Law School,
York University.

Sittings in the United Kingdom

The Department of Trade

Mr. Michael S. Morris, Undersecretary of Trade, the Insurance Division.

The Office of the Director General of Fair Trading

Mr. Gordon Borrie, Director-General of Fair Trading, and his associates:

Messrs. Preston, Departmental Solicitor; Gribbon, Senior Economist; Scott, Director of Consumer Credit; and D. Armstrong.

British Insurance Association

Messrs. J. A. C. Greenwood, K. A. Mansfield, D. Fawell, Williams, Thomas Kent, West, Shepherd, Morgan, Hollis, Marriott, Rebault, Hartley, Johnson, Boswell, Peter Sherman and Barnes.

Royal Insurance Company Limited

Mr. J. A. C. Greenwood, Chief General Manager, and Mr. H.K. Hallis, Assistant Manager.

Lloyd's of London

Mr. V. V. Hudson, Motor Underwriter;
Mr. Malcolm Beard, Chairman of Lloyd's Canadian Automobile Sub-Committee;
Mr. Roger Jones, Secretary of Lloyd's Motor Underwriters;
Mr. R. F. Limage, Underwriter of A.L.S. Motor Syndicate;
Mr. J. Shepherd, Claims Manager of Milestone Syndicate;
Mr. Richard Ballantyne, Non-Marine Underwriter;
Mr. Frank Barber, Non-Marine Underwriter;
Mr. Alan Radmore, Lloyd's Underwriters and Non-Marine Association;
Mr. P. H. Reed, Assistant Manager, Legislation Division, Advisory and Legislation Department of Lloyd's; and
Mr. B. A. Edmonds, Legislation Division, Advisory and Legislation Department of Lloyd's.

The Motor Insurance Repair Research Centre, Thatcham

Mr. V. D. Gibbs, Director of Research.

Royal Commission on Civil Liability and Compensation for Personal Injury

The Right Honourable the Lord Pearson, P.C., C.B.E., Chairman;
Mr. Norman S. Marsh, Q.C., Member;
Mr. P. H. Waldron, Member;
Mrs. M. E. Parsons, Secretary.

British Universities

Professor Patrick Atyiah, Oxford University, formerly of the Australian National University;
Professor R. L. Carter, Nottingham University.

Sittings in Switzerland

The Federal Insurance Regulatory Authority of the Republic of Switzerland

Herren Ulrich Christinger, Zuchter, Zoomstein, Flickinger, Parsch and Kestley.

Swiss Reinsurance Company

Herr Helmut F. Rudolf, General Manager and Supervisor of International Facilities, World Wide Reinsurance;

Herr Heinz B. Vischer, General Manager;
Herr Herbert Schonenberger, Manager, Investment Department;
Herr Olmar Schmidlan, Deputy Manager;
Herr Willie Schurpf, Assistant Manager, Specialized Liability Losses.

Zurich Insurance Company

Herr Hans-Peter Karlin, Manager and Canadian Liaison;
Herr Robert Kuhn, Manager, Underwriting Department;
Herr Max Siebermann, Manager, Investment Department;
Herr H. Bouvard, Manager, Claims Department;
Herr W. Schoer.

Audatex Holding A.C., Zurich

Herr Fritz Suter, Technical Manager

European Universities

Dr. Jan Hellner, University of Stockholm, Sweden;
Professor B. Viret, Lausanne University, Switzerland.

APPENDIX B
(referred to in Chapter 3)

IN THE SUPREME COURT OF ONTARIO
DIVISIONAL COURT
GRANT, LABROSSE AND STEELE, JJ.

BETWEEN:

MARY GILL,

Plaintiff
(Respondent)

— and —

TORONTO TRANSIT COMMISSION,

Defendant
(Appellant)

Heard: December 22, 1976

H. David for
the plaintiff

W. Graham Chase
for the defendant

STEELE, J.: (Orally for the Court)

This is an appeal from the decision of Cromarty, J. relating to S.267 of *The Railways Act*, R.S.O. 1950, c.331, which reads as follows:

“(1) Subject to subsection 4 of Section 139 all actions for indemnity or for any damage or injury sustained by reason of the construction or operation of the railway shall be commenced within one year next after the time when such supposed damage is sustained or if there is continuation of damage within one year next after the doing or committing of such damage ceases and not afterwards.”

Section 1(o) of the Act defines a railway to include a station. The question that was propounded under Rule 124 was as follows:-

“Is the action statute barred by reason of the failure of the plaintiff to commence action within one year from the date of the accident in accordance with Section 267 of the Railways Act, R.S.O. 1950, c.331.”

Cromarty, J. answered the question in the negative. Leave to appeal from that decision was given by Weatherston, J.

The facts of the case are set out in the appeal book, particularly in paragraphs 3 and 4(f) of the statement of claim. The plaintiff was a fare-paying customer for the purpose of being transported by the defendant's transportation system on the premises known as the St. George subway station. It is a fair assumption to make from paragraph 4(f) that she was on a stairway provided for the ascent and descent of fare-paying customers. The question, simply stated, is, is such a portion of a station to be considered part of the operation of a railway within the meaning of *The Railways Act* so as to come within the limitation section.

We are all of the opinion that such a portion of a railway station is within the meaning of the operation of a railway as set out in the particular circumstances of this case, and therefore the appeal will be allowed.

The question that was posed pursuant to Rule 124 will be answered in the affirmative and as a result the action is therefore dismissed.

It is surprising in view of the long history of the Act and of railway stations generally that a matter of this nature does not appear to have been before the courts previously. This being so, we do not believe that it is a proper case for costs either in this motion or in the action.

APPENDIX C

(referred to in Chapter 8)

Illustration comparing the risks covered under Section C — loss of or damage to insured automobile under the present standard automobile policy and under the revised coverage recommended in Chapter 8

RISK	EXISTING COVERAGES				RECOMMENDED COVERAGES:	
	All Perils	Collision	Comprehensive	Specified Perils	Collision	Comprehensive
Collision	Yes	Yes	No	No	Yes	No
Upset	Yes	Yes	No	No	Yes	No
Fire	Yes	No	Yes	Yes	No	Yes
Theft	Yes	No	Yes	Yes	No	Yes
Attempt at Theft	Yes	No	No (?)	Yes	No	Yes
Windstorm	Yes	No	Yes	Yes	No	Yes
Earthquake	Yes	No	Yes	Yes	No	Yes
Hail	Yes	No	Yes	Yes	No	Yes
Explosion	Yes	No	Yes	Yes	No	Yes
Riot	Yes	No	Yes	Yes	No	Yes
Civil Commotion	Yes	No	Yes	Yes	No	Yes
Rising Water	Yes	No	Yes	Yes	No	Yes
Missiles	Yes	No	Yes	No	No	Yes
Flying Objects	Yes	No	Yes	No	No	Yes
Falling objects other than aircraft or parts thereof	Yes	No	Yes	No	No	Yes
Falling aircraft or parts thereof	Yes	No	Yes	Yes	No	Yes
Forced landing of aircraft	Yes	No	Yes (?)	Yes	No	Yes
Lightning	Yes	No	No (?)	Yes	No	Yes
Stranding, sinking, burning, derailment or collision of any conveyance in or upon which the auto is being carried on land or on water	Yes	No	No (?)	Yes	No	Yes
Malicious mischief	Yes	No	Yes	No	No	Yes
Any other perils	Yes	No	?	No	No	Yes

APPENDIX D (referred to in Chapter 10)

Extract from the Third Report to the Committee from Woods, Gordon & Co., its consultants.

CANADIAN PROPERTY AND CASUALTY INSURANCE INDUSTRY: SOME INCOME TAX CONSIDERATIONS

Canada levies corporate income taxes on two classes of taxpayers — residents and non-residents. Corporations resident in Canada are taxed on their world income at corporate rates and are allowed a credit against Canadian taxes payable for taxes paid to foreign countries. The credit for foreign tax cannot exceed the Canadian tax applicable to the foreign income.

Corporations not resident in Canada are not taxed on their world income but rather are taxed on their income from carrying on a business in Canada. They would also be taxed on investment income received from sources in Canada which is not related to carrying on business in Canada. Income from carrying on a business in Canada is taxed to a non-resident corporation at the same corporate rates as are applied to the business income of Canadian resident corporations. Investment type income which does not relate to carrying on business in Canada would be subject to Canadian withholding tax on the gross amount of the investment income which, as of January 1, 1976, is withheld at a rate of 25%. This general rate of 25% will be reduced where the residency of the corporation receiving the investment income is in a country with which Canada has signed a tax treaty. The withholding rate specified in most treaties is 15%. Specific investment income such as interest on federal or provincial bonds may be entirely exempt from Canadian withholding tax.

An additional tax is levied against non-resident companies on the after-tax surplus earned from carrying on a business in Canada. Conceptually, this tax is comparable to the Canadian withholding tax that would apply where such business income earned by a Canadian subsidiary is remitted to the non-resident parent by way of dividend. This tax is known as a “branch tax” and is levied at the same rates as the Canadian withholding tax rates — 25% for non-treaty countries and generally 15% for treaty countries.

To summarize, whereas a corporation resident in Canada is required to include all of its world-wide income in its Canadian tax base

and is granted relief for foreign taxes paid against Canadian tax payable on foreign profits, corporations not resident in Canada are subject to tax only on their Canadian business income but are also required to pay a Canadian withholding tax (branch tax) where their Canadian surplus is deemed distributed out of Canada. Non-resident corporations are also subject to normal Canadian withholding taxes on investment income which does not relate to a business carried on in Canada.

COMPUTATION OF BUSINESS INCOME

The general principles which have been developed by the Courts for the computation of business income include the following:

1. use of the accrual method of accounting;
2. inclusion of all amounts received or receivable in the year in revenue for the year;
3. deduction of expenses in the year in which they are paid or payable, whichever occurs first;
4. deduction of outlays or expenses only if incurred for the purpose of earning income and not on account of the acquisition of an asset or an advantage of an enduring benefit; and
5. deduction of capital cost allowance in lieu of depreciation.

All of these general principles are subject to many specific provisions of the Act which may override these principles. Although there are many such specific provisions, one which is of particular interest to Property and Casualty insurers is the allowance for a deduction of the following reserves:

- (a) 100% of unearned premiums, and
- (b) other policy reserves required to be reported to the Department of Insurance.

The application of these special rules to the computation of business income may create problems for property and casualty insurance companies due to the uniqueness of their business. This is a common occurrence for many corporations due to the fact that the income tax law was drafted with manufacturing and services companies in mind and problems of other industries have usually been recognized by the ad hoc drafting of special provisions into the Act from time to time.

The problem that arises for these insurers results from the fact that unlike life insurers, the particular reserves allowed to property and casualty insurers are a mandatory deduction which must be claimed in computing income for tax purposes to the maximum allowable each year. There is no flexibility allowed to them whereby they might claim

something less than the maximum reserves. This lack of flexibility can create problems for companies which have had a few years of significant losses since, like other companies, they are limited to a five-year loss carryforward rule. It is quite possible that many companies in the industry are finding that losses incurred in underwriting are expiring with the result that they may risk paying tax on income in excess of their actual profits.

SPECIAL PROVISIONS FOR NON-RESIDENT GENERAL INSURERS

Non-resident property and casualty insurers may operate in Canada either directly through branches or indirectly through Canadian subsidiaries. In the event that such companies operate through Canadian subsidiaries these subsidiaries would be subject to the same rules as for other Canadian resident companies. Where such companies are operating in Canada directly, special rules apply in addition to the general rules noted above. These special rules provide for the determination of the amount of investment income appropriately related to "carrying on the insurance business in Canada". These special rules are required because of the difficulty in identifying which assets of a world-wide company are in fact used or held in the Canadian insurance business.

It is relatively easy to determine the Canadian portion of most components of income from carrying on an insurance business in Canada. For example, in determining premium income related to the carrying on of business in Canada the tax authorities have generally accepted that premiums on policies covering Canadian risks are income from carrying on business in Canada whereas premiums related to foreign risks would not be part of Canadian business income. It is relatively easy for companies to segregate premiums relating to the location of the risk. Likewise, the claims related to such "Canadian policies" can be readily identified.

The split of the world-wide investment income between Canada and out-of-Canada is not as easy. The problem of segregating investment income between in-Canada and out-of-Canada business is resolved by incorporating special rules for determining the amount of gross investment revenue which will be deemed to relate to carrying on of business in Canada of a non-resident insurer.

There are two methods which may be used by non-resident insurers in determining the amount of investment income attributable to the Canadian business. One is called the "proportional method" and the other the "branch method". Both methods are comparable to the extent that they are intended to attribute to the Canadian business an amount of investment income which relates to assets held against policies covering

Canadian risks. Under both methods the dollar amount of assets considered to relate to the Canadian business is determined by the calculation of an amount known as the "Canadian Investment Fund" and it is the size of this fund which bears most directly on the amount of investment income included in computing income from carrying on the insurance business in Canada.

It should be noted that prior to 1969 property and casualty insurers were not required to include investment income in the computation of business income. When the rules were changed to require such inclusion based on the size of the Canadian Investment Fund, consideration had to be given to the amounts that should be included in computing the size of this fund. It was quickly resolved that the dollar amount of the fund should at least equal the policy reserves and other liabilities relating to the Canadian business. The question open for discussion was whether or not non-resident insurers should also include a reasonable amount of surplus necessary to support these liabilities. The various Insurance Acts in Canada require Canadian companies to maintain surpluses of 10% to 20% of liabilities depending on the type of business being underwritten.

In resolving this issue a decision was finally made not to require the inclusion of any surplus in addition to Canadian liabilities. In future years, however, the fund will be increased by any after-tax profits and net after-tax capital gains realized since 1968. The result of this calculation is that most non-resident property and casualty insurers will have less taxable income from carrying on business in Canada than would a comparable resident.

The branch tax at 25% (15% for treaty countries), which is payable on the after-tax income inclusive of capital gains and capital losses, is only payable if the value of world-wide Canadian assets should fall below the size of the Canadian Investment Fund. The non-resident insurer may elect to pay this tax in which event the surplus on which the branch tax has been voluntarily paid is no longer required to be included in the Canadian Investment Fund.

PROBLEMS OF INCORPORATING CANADIAN BRANCHES OF NON-RESIDENT PROPERTY AND CASUALTY INSURERS

It is our observation that many non-residents have been giving serious consideration to the incorporation of their Canadian branches as subsidiaries resident in Canada. Our experience would lead us to believe that many such proposals might be abandoned because of the serious adverse tax cost involved in such a transfer. Although the problems are

not likely to be solely confined to taxes, the following problems which arise as a result of the Canadian tax law have been identified:

- (a) the additional investment income subject to tax by a resident Canadian insurer as opposed to a non-resident insurer;
- (b) the inability to transfer policy reserves from the Canadian branch to the Canadian subsidiary;
- (c) the inability to transfer accrued but unrealized investment losses from the Canadian branch to the Canadian subsidiary;
- (d) the lack of special rules to treat the transfer of such a business as a sale in the ordinary course of business as opposed to a capital transaction.

If a decision were made that government policy should be to encourage non-resident insurers to operate in Canada as Canadian companies, a detailed review should be made of the tax problems involved.

APPENDIX E (referred to in Chapters 10, 11, 12 and 13)

Extract from the Third Report to the Committee from
Woods, Gordon & Co., its consultants

RATEMAKING AND UNDERWRITING

INTRODUCTION

The analysis of the setting of automobile insurance premiums in Ontario contained in this Appendix begins with a discussion of the procedures used by the Insurers Advisory Organization (IAO), the largest ratemaking body in Canada. IAO calculates the premiums that it feels its members need to charge for the coming year to make an adequate profit. Its members must then decide whether to adopt the suggested rates or to adjust them. All members of the industry, whether IAO members or not, seem to use the IAO rates as a “bench mark” and analyse their rates in relation to those advised by IAO.

Following the detailed discussion of IAO’s procedures, some variations used by individual companies have been summarized. Details concerning the procedures followed in practice by the industry in Ontario were obtained during interviews with senior personnel of a representative sample of companies, both IAO and non-IAO members.

In addition, the Appendix contains observations concerning the risk selection (underwriting) practices followed by the industry in Ontario. Included, as well, are comments on the methods used by the industry to handle the high-risk driver or, as it is known in the industry, the “residual market”.

In summary, the Appendix has been organized under the following headings:

IAO’S RATEMAKING PROGRAMME

- Introduction
- Statistics
- Differential Complex
- Calculation Procedure

VARIATIONS

- Statistics
- Differentials
- Calculation Procedures

RISK SELECTION

IAO'S RATEMAKING PROGRAMME

Introduction

The nature of insurance makes the pricing of it a more difficult task than the pricing of most other goods and services. In most cases, annual premiums are set in the spring to be effective from July 1 of a year until June 30 of the following year. Normally, annual policies sold from, say, July 1, 1976 to June 30, 1977 would be priced at the same premium rate. Hence, a policy sold on June 30, 1977 would be effective until June 30, 1978. Two full years (July 1, 1976 to June 30, 1978) would pass before all policies with the same premium rate would expire. Accidents can, and will, occur right up to the last day policies are in force. Many of the resultant claims will not be settled for a period of time after that. The ratemaker in performing his task must attempt to forecast costs several years into the future to ensure that the premiums charged are sufficient to pay all the costs of any and all the claims pertaining to those policies when they are finally settled.

Statistics

A starting point in this forecasting must be analyses of past rates to ensure that they were adequate on the basis of the most recent projections of the claims costs they were to cover. It would be insufficient to increase previous premium levels to offset only expected increases in costs if the loss provisions in the previous premiums were inadequate. In Canada, the statistical information required to perform these analyses is gathered in an exhibit called the "Green Book". This is prepared annually by the Insurance Bureau of Canada (IBC) at the instruction of the provincial Superintendents of Insurance.

In a report that accompanied the 1975 Green Book, Mr. V. Taht, F.C.A.S., F.C.I.A., A.S.A. summarized the history and makeup of this annual statistical exhibit as follows:

"The first Canadian automobile insurance statistical data was gathered by the Canadian Automobile Underwriters Association commencing with their January, 1926 Statistical Plan which was devised by their first Casualty Actuary, Mr. C. H. Frederickson, F.C.A.S. In early 1929, an Ontario Royal Commission was appointed with the Honourable Mr. Justice Hodgins as Commissioner who was advised by a firm of consulting Actuaries on both rate levels and statistical procedures. His "Report on Automobile Premium Rates" was submitted in 1930 and concluded with six recommendations, the fifth of which stated:

'That the loss of insurance in Ontario in the future should be established by the combination of the experience of all com-

panies, and that such experience should be developed on the statistical plan prescribed, pursuant to Section 69(a) of the present Insurance Act.'

"Immediately following his recommendations, one paragraph is of continuing interest and import today:

'I am deeply impressed with the difficulties encountered in the earlier years of automobile insurance by those who carried it on. It is a comparatively new form of insurance, and has not the stable elements which make life insurance and fire insurance less difficult, while it has a great variety of risks and hazards on different makes and styles of motors. It has not yet reached the point in organization which should have produced lessened expenses, and not very much attention has been paid to this question, nor has it had, until now, any trustworthy record of loss experience. It has had to deal with a rate war, and strong competition, increasing even now in its own field. It has not yet overcome the difficulties of fleet-rating or the hazards of collision due to recklessness, youth, want of experience, or other causes and there are other elements apparent to me which make it difficult to forecast the changes which are inevitable in the business.'

"Upon receiving the Royal Commission 'Report', the Ontario Superintendent of Insurance, R. Leighton Foster, appointed an Advisory Committee to recommend to him a compulsory standard Statistical Plan. During 1930, this Committee met many times and the original all-industry uniform Statistical Plan came into being. The Statistics Department of the Canadian Automobile Underwriters' Association was appointed the automobile insurance Statistical Agency for Ontario and subsequently by the other provinces as similar provisions were included in their acts. The relevant Sections of the various Acts are: Alberta — 97; New Brunswick — 75; Newfoundland — 70; Nova Scotia — 109; Ontario — 78; Prince Edward Island — 65; Quebec — 218A. The wording most commonly used reads as follows:

'Every insurer licensed under this Act that carries on in Alberta the business of automobile insurance shall prepare and file, when required, with the Superintendent or with such statistical agency as he may designate, a record of its automobile insurance premiums and of its loss and expense costs in the Province, in such form and manner and according to such system of classification as the Superintendent may approve.'

'The Superintendent may require any statistical agency so designated to compile the data so filed in such form as the

Superintendent may approve and the expense of making the compilation shall be apportioned, among the insurers whose data are compiled by the agency, by the Superintendent, who shall certify in writing the amount due from each insurer, and the amount is payable by the insurer to the agency forthwith.'

"The governmental function of the Statistical Agency was carried out by the Canadian Underwriters' Association for 38 years until January, 1969 when the Statistics Division was transferred to the Insurance Bureau of Canada. Since that time, the Statistics Division of the Bureau has carried on an automobile insurance Statistical Agency for all provinces and territories other than for those provinces where government monopoly provides or will provide basic automobile insurance coverage (British Columbia, Manitoba and Saskatchewan).

"A Statistical Advisory Committee such as was established first in 1930 continues to function for the Association of Superintendents of Insurance, under the Chairman of the Association Automobile Committee, who is the Ontario Superintendent of Insurance, Mr. Murray A. Thompson, Q.C. The Advisory Committee consists of industry leaders in automobile insurance who are experienced in automobile ratemaking statistics and compilation requirements. The Actuary of the Statistical Agency acts in an advisory capacity to the Committee. The Association of Superintendents of Insurance periodically retains consultants; as in 1967 when Doctors Mayer-son and McGuinness, Fellows of the Casualty Actuarial Society, reviewed the coding plan, statistical exhibit format and ratemaking methods. Their findings were reported to each provincial Superintendent of Insurance. With the advice of the Statistical Advisory Committee and consultants, the Association of Superintendents has approved a gradual evolution and refinement of the statistical exhibits contained in the annual experience reports over the past 45 years.

"The annual exhibit of the collated statistical data is commonly called the 'Green Book' and the latest exhibit is that compiled as of the end of December, 1975 entitled '1975 Automobile Insurance Experience'.

"Since 1970, Green Books have expanded to include a new opening section showing loss ratios based on the actual premiums and losses reported to the Agency for each of the past 5 policy years. This supplements the technical rate-level adjustment sections, which traditionally have been, and remain, the essential exhibits of each Green Book. These new 'Actual Loss Ratio Exhibits' are primarily of historical importance and have no relevance to the prospective

rate-level adjusting analysis that is made of the traditional, technical exhibits of the Green Book.

“To properly understand these initial exhibits, and the technical exhibits which follow them, careful attention should first be given to the three pages of opening remarks describing the contents of the actual loss ratio exhibits. Two key points are that first, the exhibits are on a policy year basis; one description of policy year was made by Mr. F. Harwayne, F.C.A.S., consulting actuary for the 1957 Nova Scotia Royal Commission (and Chief Actuary for the New York State Insurance Department) where he said:

‘Under the policy year method of compiling experience, records are maintained of all policies with effective dates during a given calendar year. The loss experience under these policies is recorded and premiums, exposures and losses on these policies are reported to the Statistical Agency. In this type of reporting, there is an exact correspondence between premiums and losses and it is for this reason, that policy year experience is usually considered to be superior to calendar year experience for ratemaking.’

“Secondly, in all of the exhibits, incurred losses and the loss adjustment expenses are not the incurred losses of industry calendar-year annual statements but rather are, for each policy year, the summation of (1) all claim payments made to the date of the experience close off and (2) the outstanding reserve estimates for all claims or portions of claims, remaining to be paid in future for each policy year; these losses balance with the annual statements of each Company. As a result of policy year accounting, each policy year’s experience ages or develops as the succeeding two Green Books are published, finally displaying each policy year’s experience a full year and a half after all of that calendar period’s policies have expired. This actuarial technique of exhibiting experience eliminates the need to estimate special reserves, such as those for incurred but not reported losses. Further aging of policy year incurred losses is exhibited on the last page of the Green Book where developments are tracked to the end of five (and starting with the 1970 fiscal-period, five and one half) years, providing an extended testing of the industry reserving practices for each policy year.

“Immediately following the Provincial and Canada-wide ‘Actual Loss Ratio Exhibits’ for the most recent policy years, come the technical rate-level adjustment sections of the Green Book. These exhibits provide the same type of information as was the objective of the 1930 Advisory Committee to R. Leighton Foster. Basically, these technical ‘loss cost’ exhibits are to test the adequacy of the loss

cost, or pure premium, content of *current* rate levels. For example, the 1975 Green Book exhibits test actual 1975 *average all-industry* rate levels for each province and territory, relating the 1975 loss costs (based on 1975 premiums), to all-industry policy year loss costs for the five years 1971 through 1975 (based on actual claims experience and cars insured). This is a difficult concept to understand and, again, careful attention should first be given to the remarks inserted as a foreword to these sections found on pages 82 through 89 in the 1975 Green Book. This foreword contains descriptions of the various automobile insurance coverages exhibited, the types of private passenger and commercial automobile policies studied separately, the various country-wide classification exhibits differentiating the classes of automobile, merit rating and deductible experience. The foreword concludes describing, in some detail, each of the 9 columns of data exhibited.

“There are two particularly important features of these technical sections of the experience. Firstly, the exhibits are artificial and are intended purely to test adequacy of loss cost provisions in current average rate levels; they are not intended (and should not be mistaken) to portray actual underwriting results for the industry. Secondly, such exhibits represent the basic ratemaking statistics used by casualty actuaries; the approach is not one of making specific rates however, but rather the testing of the overall adequacy of existing average rate levels. A rate level test approach is used because there are so many combinations of specific rating factors that go into any specific rate; driver characteristics, use of vehicle, merit-rating classification, territory, deductible or liability limit variations to name the major factors. The combinations of these factors create hundreds of classes of experience, many too small in number of exposures to make specific ratemaking possible. In addition, there is only limited mathematical certainty of stability in the development and consistency of automobile insurance statistics in future years; as stated in the Hodgins’ Report there is very little similarity to life insurance statistics, for example, where it is possible to mathematically model statistical probabilities very successfully. Lack of both credibility and stability are the major reasons overall rate levels are tested and specific rates are not made, in the literal sense.

“It should be noted in the opening paragraph of the forward that ‘The actual loss costs for the past five policy years (shown in Column 8) have not been adjusted for any trend to bring them to a common level’; in other words, in the 1975 Green Book, 1971 through 1975 policy year loss costs have not been adjusted to the 1975 level representative of the current policy year average pre-

mium being tested. The incurred loss cost figures are simply unadjusted, actual fact as to the industry's experience over the most recent five rating years. It is the responsibility of the analysts to take trend into account and make the projections necessary to bring the data to common level and make their prospective estimates of loss cost levels for the coming rating period.

"The Green Book unadjusted data must be analysed to incorporate trend and projection and for this reason, annually, the Insurance Bureau of Canada's Automobile Committee interprets the experience and makes general recommendations to the Members of the Bureau. This analysis covers the all-industry indicated changes in pure premium (or loss cost) levels for the coming rating or policy period. The most recent annual Bulletin published analysing the last 1974 Green Book was Bulletin 75-14 of April 29, 1975, which was also sent to the Superintendent of Insurance of each Province.

"As soon as the Committee's analysis is completed for 1975 data, a similar 1976 Bulletin will be issued. The Committee's basic function is to make such average estimates of the indicated changes by Province and territory across Canada. However, the analysis does not cover all the fine details of the rate-level adjustment steps later taken by individual insurers or organizations of insurers; for example, relativities of classes, merit-rating, deductibles, and exhibits of small volume commercial experience are not analysed in-depth, except to note cases where the statistical experience indicates specific attention is needed when detailed analysis is made by those who determine rates.

"The corporate and individual company rating organizations make their further, detailed analyses in line with their own particular experience and views and thereby determine their requirements for rate-level adjustments. These decisions are based on the all-industry Green Book exhibits, Supplemental Technical Exhibits, their own company or group experience, their own judgement and using as they see fit, the interpretative Bulletin on indicated industry-wide loss cost indications."

The standard Statistical Plan referred to in the foregoing is a system of reporting to IBC all the relevant premium and claim information needed for an analysis of past experience for ratemaking. It calls for each company to report monthly information on each policy written or cancelled and each payment on a claim; in effect, every transaction concerning every policy. As well, other information such as outstanding claims, must be reported at specified times throughout the year. This information is then compiled by the IBC and released annually in the form of the Green Book.

Among the factors that the Statistical Plan requires to be reported are the date the policy was written, its term, the territory in which the insured lives, the age and use class, the coverage, and the claim record. All of these have been determined to be factors necessary for rate determination.

The dates are required so that the policy and subsequently any claims on it can be properly assigned to the correct period or policy year.

Territorial division information is required since experience data, particularly accident frequency and the average cost of accidents (severity), have shown that across Canada there are wide variations in risk exposure. Mr. D. B. Martin, in his paper "Automobile Insurance Ratemaking in Canada", traced those variations to topographical differences and their effect on climatic conditions, highway development, law-enforcement standards, concentration of vehicles on the road and even to the attitudinal differences between various ethnic groups. For example, statistics show that the accident frequency, meaning the number of cars per hundred which are involved in accidents in a given year, was, in 1974, 8.4 for the Province of Ontario, compared to 10.9 for the Province of Quebec.

Consequently, the Statistical Plan divides the country into statistical territories of which there are 19 in Ontario. For rating purposes some of the smaller territories with characteristics in common are combined so that there are only 12 rating territories used by IAO in Ontario.

The Statistical Plan categorizes all drivers into 14 separate groups, depending upon the age of the operator and the use to which the vehicle is put. The categories are as follows:

PLEASURE — NO MALES UNDER 25, NO UNMARRIED MALES AGES 25 THROUGH 29 WHO ARE PRINCIPAL OPERATORS; NO FEMALE PRINCIPAL OPERATORS UNDER 25, NO UNMARRIED FEMALE OCCASIONAL OPERATORS UNDER 25.

Class 01: No driving to work; annual mileage of 10,000 or less; 2 or less operators per automobile who have held valid operators licenses for at least the past 3 years.

Class 02: Driving to work 10 miles or less one way permitted; unlimited annual mileage; 2 or less operators per automobile.

PLEASURE — NO MALES UNDER 25, NO FEMALE PRINCIPAL OPERATORS UNDER 25.

Class 03: Drive to work over 10 miles permitted; unmarried female occasional drivers under 25 may drive; no unmarried male principal operators ages 25 through 29.

Class 04: Unmarried male principal operator ages 25 through 29.

PLEASURE OR BUSINESS:

Class 06: Occasional male driver use — male under 25.
(Note — The principal operator insures the automobile for use by all other drivers under Classes 01, 02, 03, 04 or 07).

Class 07: Business primarily; no male drivers under age 25.

PRINCIPAL OPERATORS UNDER 25 YEARS OF AGE:

MARRIED MALE:

Class 08: Ages 20 and under.

Class 09: Ages 21, 22, 23 or 24.

UNMARRIED MALE:

Class 10: Ages 18 and under.

Class 11: Ages 19 and 20.

Class 12: Ages 21 and 22.

Class 13: Ages 23 and 24.

FEMALES — MARRIED OR UNMARRIED:

Class 18: Ages 20 and under.

Class 19: Ages 21, 22, 23 or 24.

Coverage information is required since what the average consumer thinks of as his insurance policy is actually three policies: third party liability, accident benefits, and, if purchased, loss or damage to the insured automobile. Under Section A of the policy, the insurer agrees to indemnify the insured or any other person using the car with the insured's permission against liability imposed by law. This includes injury to other people and damage to other people's property. While this coverage is not compulsory in Ontario, if it is purchased, it must be for at least \$100,000 (increased from \$50,000 effective January 1, 1977). Greater limits than this can be purchased with the usual standard limits being \$200,000, \$300,000, \$500,000 or \$1,000,000. Section B of the policy is accident benefits coverage and is mandatory in Ontario if Section A is purchased. It is a no fault coverage to the insured and members of his immediate family while riding in any car; any occupant of the insured's car; or any pedestrian hit by the insured's car. This part of the policy gives coverage for limited medical expenses, death benefits and a disability benefit. There are no deductibles or limit options available for this coverage and all drivers in the province pay the same premium. Under the last part of the standard policy, Section C, loss or damage to the insured vehicle is covered. The insured can choose from among the following four alternatives:

- 1) Collision or upset which covers damage resulting from the car hitting another car or other object and can be purchased with deductibles of \$25, \$50, \$100 or \$250.
- 2) Comprehensive which covers most perils other than collision or upset and usually has a \$25 deductible.
- 3) Specified perils which is similar to comprehensive but does not cover as many perils.
- 4) All perils which is, in effect, a combination of collision and comprehensive with just one deductible applying to both.

It is a common misconception that when a driver has an accident his premiums in subsequent years are raised to the extent that in the long run he will repay the insurance company for the loss cost. This is not the case. Apart from its statistical effect of being grouped with all the other accidents in the territory, the dollar cost of an accident has no influence on a driver's subsequent premiums. However, statistics have shown that the group of drivers with an accident history consistently have more accidents than the group of drivers with a clean record and, as a result, is a greater risk to the insurers. The Statistical Plan rates drivers in the following categories:

Record 5 means five accident free years immediately prior to the effective date of the policy;

Record 3 means three accident free years;

Record 2 means two accident free years;

Record 1 means one accident free year; and

Record 0 means an accident record within one year immediately prior to the effective date of the policy.

Historically, new drivers have been categorized as Record 0 drivers although some driver training discounts have been granted. A recent announcement by the Insurance Bureau of Canada outlined changes in this practice that, subsequently were implemented January 1, 1977. New drivers who have passed approved driver training courses now are rated as Record 3 and all other new drivers as Record 1.

The age and use categories are usually combined with the driving record, so that the risks range through the 70 categories (14 classes x 5 record types). It should be noted that an 023 risk involved in an accident immediately drops to 020 for renewal purposes. However, the 020 rate will be the same, whether the accident cost the insurer \$100 or \$100,000. If the insured has a clean record, he will escape from the 020 category into the 021 group after one accident free year, and from there to the 022 and 023 class, recapturing his original status at the end of the third year following the accident.

The data reported to IBC as called for in the Statistical Plan are analyzed and reported to interested parties in the "Green Book". The Green Book consists of two parts, an actual loss ratio exhibit section and a pure premium loss cost experience section; it is only the second that is discussed below since this is the part used in the development of rating programmes.

EXHIBIT 1

LOSS COST (PURE PREMIUM) EXPERIENCE PRIVATE PASSENGER AUTOMOBILE—EXCLUDING FARMERS ONTARIO MANUAL TERRITORY 1 TORONTO RATING DISTRICT STATISTICAL TERRITORY 717

COVERAGE	POLICY YEAR	CARS INSURED	LOSSES AND LOSS ADJUSTMENT EXPENSES INURRED	CLAIM FREQ. PER 100 CARS OF CLAIMS INSURED	AVGE. COST PER CLAIM	PROVISION FOR LOSS COSTS AT 1976 RATE LEVEL	ACTUAL LOSS COSTS PER CAR INSURED	LOSS COST RATE COL.(8)/ COL.(7)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
BODILY INJURY	'71	716,168	59,861,773	74,274	10.37	806	110.51	83.59
AND	72	755,229	66,164,358	80,920	10.71	818	110.51	87.61
PROPERTY DAMAGE	73	798,608	70,565,747	81,348	10.19	867°	110.51	88.36
	74	844,375	81,232,590	82,094	9.72	990°	110.51	96.20
	75	698,698	71,107,721	61,746	8.84	1,152°	110.51	101.77
ALL PERILS	'71	52,238	2,168,236	8,336			85.15	41.51
	72	49,908	2,204,390	8,078			85.17	44.17
	73	48,248	2,329,084	7,687			85.24	48.27
	74	46,880	2,487,593	7,036			85.31	53.06
	75	39,074*	2,410,683	5,945			85.47	61.70
COLLISION	'71	500,811	18,620,803.	46,573			67.75	37.18
	72	537,941	22,893,145	54,692			67.95	42.56
	73	576,593	27,331,195	59,579			68.19	47.40
	74	620,515	33,606,448	63,749			68.29	54.16
	75	628,561*	38,904,650	62,873			68.47	61.89
COMPREHENSIVE	'71	588,285	4,879,137	35,295	6.00	138	13.45	8.29
(\$25 DEDUCTIBLE)	72	630,775	5,247,066	37,459	5.94	140	13.45	8.32
	73	682,667	5,852,487	37,299	5.46	157	13.45	8.57
	74	730,998	7,319,839	40,405	5.53	181	13.45	10.01
	75	646,520*	7,763,097	37,028	5.73	210	13.45	12.01
SPECIFIED PERILS	'71	13,562	69,120	295	2.18	234	8.28	5.10
(\$25 DEDUCTIBLE)	72	13,568	73,922	253	1.86	292	8.28	5.45
	73	12,957	64,102	202	1.56	317	8.28	4.95
	74	10,964	68,535	191	1.74	359	8.28	6.25
	75	8,498*	43,040	144	1.69	299	8.28	5.06

*1973 INCLUDES 32 LOSSES IN EXCESS OF 50M TOTALLING \$2,754,476

*1974 INCLUDES 50 LOSSES IN EXCESS OF 50M TOTALLING \$3,607,101

*1975 INCLUDES 40 LOSSES IN EXCESS OF 50M TOTALLING \$2,971,041

The major exhibits show the private passenger and the commercial automobile experience country-wide (excluding British Columbia, Saskatchewan, and Manitoba) and separately by province. The experience is then further broken down into rating and statistical territories. As previously discussed, a rating territory can contain several statistical territories. Since the private passenger experience excludes farm automobiles, they are shown separately both country-wide and by province. Each of these exhibits gives the technical data required in rating for each of the last 5 years and for each coverage.

As well as the province and territory experience data, there is a set of exhibits that give country-wide loss ratio experience grouped by "age and use classification" and also by "driving record". This information is exhibited on an urban and an other-than-urban basis for both bodily injury and property damage and for collision coverages. This is used in testing relative loss ratios of 1973-1975 (3 years only).

An extract from page 125 of the Green Book for December 31, 1975 relating to Ontario Territory 1, the Toronto district, is set out on the facing page (Exhibit 1). It will be noted that the information is divided vertically into the various types of coverage and horizontally into nine columns. These columns require some explanation.

(1) Policy Year

The Green Book sets out five years' experience in all nine columns. Prior to 1972, the Green Book was compiled as of June of each year and contained data on policies written for each of the five preceding policy years, a policy year running from January 1 to December 31. Since 1972, the Green Book has been compiled as of December 31 to assist the industry in moving towards a mid-year adjustment of rate levels rather than the previous January or February adjustments. Thus, the Green Book now uses a policy period that extends from July 1 of a year to June 30 of the following year.

The purpose of the Green Book is to permit a comparison of one year's experience with another, therefore some method must be devised whereby losses and claims can be allocated to a certain calendar year. Three recognized methods of classification were set out in the 1965 report of the Board of Commissioners of Public Utilities of Nova Scotia which was looking into premium rates in that province. This description has been included here with changes in dates and page numbers where applicable.

a) Calendar Year: Premiums Written to Losses Paid Method

By this method, all the losses paid between July 1, 1974 and June 30, 1975 would be compared with the net premiums written during the same period. Of course, a loss paid in July 1974 would probably be on a policy which was written prior to July 1974 and, in the result, the comparison would be, to a large extent, a comparison between 1974 policy losses and 1975 premiums. The disadvantage of this method is that during changes in volume of business, either upward or downward, the figures do not accurately reflect the obligations of the insurers.

For example, assume that a company is just starting in business and on January 1st writes a single policy for a \$100 premium. Using the

“calendar year: premiums written/losses paid” method, the entire \$100 would be credited to 1975 as premium written. However, since there are only 6 months left to run in the 1975 policy period, only 6 of the 12 months’ exposure would be taken into account for the year. The loss ratio, which is a comparison of claims (and expenses) with premiums earned, would only be about one-half the realistic rate, since only half the loss (or exposure) would be related to the total premium. If the underwriting volume is constant from year to year, the anomaly would only appear in the first year. However, if the volume of the company’s business is increasing, the distortion will continue from year to year. There will always be more premium dollars being “plugged” into the ratio than are accurately related to the exposure to loss. On the other hand, if the premium volume of the company is decreasing, the effect is just the opposite. The loss ratio would be distorted upwards.

This distortion was sufficient to rule out the “calendar year: premiums written/losses paid” method as the basis for statistical analysis of the experience.

b) Calendar Year: Premiums Earned to Losses Incurred Method

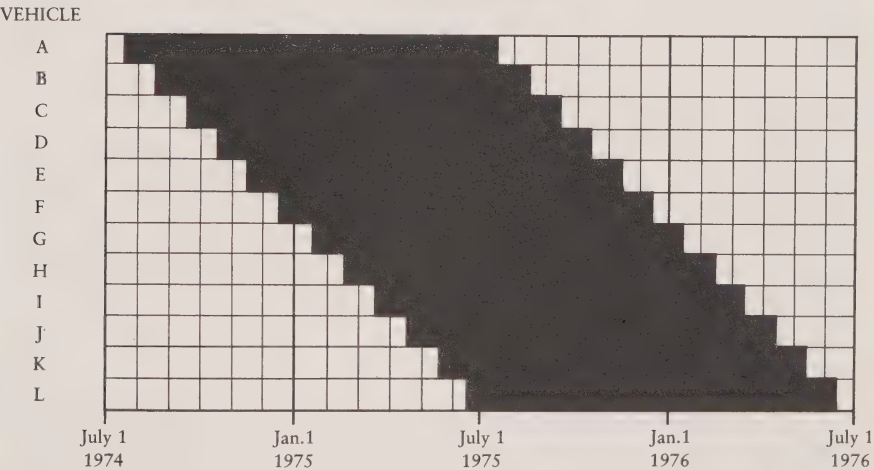
This method compares the premiums actually earned during a calendar year with the losses actually incurred, although perhaps not paid, during the same year. Thus, if a \$100 premium is paid on January 1st, only 6 of the 12 months will be covered by June 30th and in the tabulations the actuary would only allow for \$50 “earned”. This would be compared to the claims incurred. Thus, if the vehicle was involved in a \$200 accident in March, and then had the balance of the year accident-free, the \$200 claim would be compared with the one-half year exposure, and this would result in a realistic loss ratio. However, there is a weak spot to this method, and it lies in the fact that a substantial number of losses are not actually paid until the following policy period. For example, following a serious accident, the adjuster might set up an estimate of \$10,000 for losses. If the negotiations with the insured or the third party were not completed by June 30th, the \$10,000 estimate would be compared with the premium earned on the policy during the year, and this would produce the loss ratio. Then, early in the following year, the loss might be settled for \$5,000, or on the other hand, might go to Court and result in a judgment of \$15,000. In neither case would there be any way in which the figures, and the loss ratio, for the previous year could be adjusted to the proper level. Of course, if the estimates are good, the method is sound, but the possibility of substantial distortion is sufficient to rule out the method.

c) The Policy Year

Under the “policy year” method, all claims are related to the year in which the policy is written, regardless of when they are paid. For example, a policy written on July 15, 1974, will not expire until noon July 15, 1975. A loss occurring on July 14, 1975 would be allocated to the 1975 policy year, even though extended negotiations, followed by litigation, might mean that the loss will not actually be paid for three or four years after the expiration of the policy.

The insurers say that the purchase of new policies (or renewals) is spread fairly evenly throughout the year. This means that, as far as the so-called “policy year 1975” is concerned, there are two extremes. First, there is the case of the driver who buys his policy on July 1, 1974, and that policy will expire on July 1, 1975. At the other extreme, there is the driver who buys his 1975 policy on June 30, 1975, and it will not expire until June 30, 1976. Thus, to get a complete picture of the 1975 policy year, the companies will have to wait until June 30, 1976 before all the 1975-written policies have expired. In other words, if all policyholders purchased their 1975 coverage on July 1, 1974, it would only be necessary to wait until July 1, 1975 to obtain complete

EXHIBIT 2
1975 POLICY YEAR



The 1975 policy year for 12 vehicles contains a total of 144 “risk months”. As of July 1, 1975, 72 of those “risk months” will have elapsed, with 72 to go to complete the policy year.

As of January 1, 1976 there will be 18 “risk months” or 12½ percent of the 1974 policy year unexposed. The 1975 Green Book, tabulated as of December 31, 1975, treats the 1975 policy year as 74 to 96 percent complete depending on coverage.

Of the 72 “risk months” between July 1 and December 31, 1975, 54 (or 75 percent) are covered by policies written in the 1975 policy period.

experience records for the year 1975. However, since the 1975 policies are purchased throughout the entire year, from July 1st to June 30th, it is necessary to wait until June 30, 1976 to obtain all the records for the 1975 policy year. For this reason, the "policy year" really embraces a total of 24 months' experience—namely, the 12 months of the year in which the policy is written and the 12 months of the year in which the policy expires. It must not be thought, however, that a policy year, even though extending over 24 months' experience, covers any more than 12 "risk months" for any vehicle. Reference to Exhibit 2 on the facing page will clarify the problem. It relates to the 1975 policy year, and it assumes that only 12 vehicles are covered, and that the purchase of policies is spread evenly throughout the year. The policy, for vehicle A is purchased on July 15, 1974, and expires on July 15, 1975. The policy for vehicle B is purchased on August 15, 1974, and so on to vehicle L for which the policy is purchased on June 15, 1975, expiring June 15, 1976. It will be apparent at once why the companies have to observe the two calendar years July 1, 1974 to June 30, 1976 before they can arrive at an accurate total for losses incurred on policies written in policy period 1975.

In the period July 1, 1974 to June 30, 1975, vehicle A will have 11½ months' exposure, vehicle B, 10½ months' exposure, etc., for a total of 72 "risk months". Thus, on July 1, 1975 the insurance companies will have "earned" exactly half of the premiums which were paid on the 1975 policies, and their exposure to risk will be exactly half expired. The balance of the premium will be earned and the balance of the risk experienced throughout the whole of the period July 1, 1975 to June 30, 1976. Thus, returning to the excerpt from the Green Book which is set out on page 00, it will be noted in column 1 that the last year reported is 1975. Since this book was published as of December 31, 1975, the 1975 policy year still had six months to run. For this reason, the actuary and the companies refer to 1975 as an "incomplete 18-month policy year".

(2) Cars Insured

The Green Book territory 1 statistics (Exhibit 1) shows 716,168 net private passenger cars were insured for bodily injury and property damage in 1971. Net, in this case, means the number of insured cars that would have produced the total premiums received if each car had been insured for a full 12-month period. For example, two vehicles for which the policies are cancelled after six months of insurance would count as one car insured. On this basis, net cars insured increased to 844,375 in 1974. For 1975 the figure reported is 698,698, since only 18 months of the 24-month policy year had elapsed by December 31, 1975, when the statistics were compiled. The introduction to the Green Book states:

“The drop in the number of cars insured in 1975 compared to previous years does not indicate that a smaller number of cars has been insured in that year. This is because all policies written during 1975 have not expired at the time the experience is collated (December 31, 1975). Therefore, it is necessary to convert the experience from a reported to an earned or exposed basis. If a comparison by year is desired, the figures shown for 1975 should be increased by 4% to 26%, depending on coverage.”

In brief, due to the unexpired part of the policy year 1975, the total net cars insured in that year is low. The reason for this figure is demonstrated in the diagram in the explanation of policy years (Exhibit 2 on page 17). As of December 31, 1975, vehicle G has only half a month of exposure left, vehicle H has 1½ months to go, and so on. The total “risk months” left unexposed as of December 31, is 18. Since the total risk exposure for the 1975 policy year was 144 months (i.e., 12 vehicles at 12 risk months each), the total of 18 months yet to run represents about 12½ per cent of the total risk. Experience reveals, however, that most accidents occur during the winter months and the 18 “risk months” which are left in the policy year 1975 are concentrated during the winter. Actual figures of claims incidence have demonstrated that the 12½ per cent reduction in apparent exposure is really 20 percent in effective exposure in the case of bodily injury and property damage. The tabulation of policies actually issued during the calendar year 1975 probably revealed a total of about 873,375. Taking 80 per cent of this figure, the underwriters came up with a total for the incomplete 18-month year 1975 of 698,698 vehicles, and this is the figure which appears in column (2). When the next Green Book comes out, with information collected to December 31, 1976, the actual figure for 1975 cars insured likely will be shown for bodily injury and property damage at something over 873,000.

(3) Losses and Loss Adjustment Expenses Incurred

These are the sum of the losses paid to date plus the outstanding losses reported at the time of exhibit. Allocated loss adjustment expenses are reported to the Statistical Division and are included. Salaries and travelling expenses of salaried staff adjusters are included by factors that are calculated every second year based on reports received from all companies. Unallocated claims adjustment expenses are included by applying country-wide factors which are based on expense analyses performed by the Insurance Bureau of Canada.

Again, the 1975 figure is only as of December 31, 1975 and so only includes 18 months’ experience as opposed to the 24 months required to complete the year. As well, the indicated figure for each of the completed years will change in subsequent years as the experience develops. As better estimates of the final cost of the claims become available or the

claim is paid and closed the existing reserves are changed and so are the Green Book figures. This continues up until 42 months experience is reached at which time all claims are considered fully developed.

(4) Number of Claims Incurred

The actual number of claims incurred (i.e., either paid or outstanding) allocated to each of the policy years is indicated in this column. As before, the 1975 figures are only as of December 31, 1975, with about six more months to go before the completion of the 1975 policy year. These figures are, therefore, from 4 to 26 percent low depending on the coverage. When the next Green Book is produced, the actual total of the policy year 1975 will be displayed, at which time the number of bodily injury and property damage claims incurred may be expected to be about 77,200.

(5) Claim Frequency

Claim frequency is the number of claims during the policy year per 100 cars insured and is determined by dividing the data in column (4) for claims incurred by the figures in column (2) for cars insured. Claims frequency provides a reliable index of probability of loss, and therefore, enables insurers to compare the risk in one geographical territory to another. For example, the 1975 bodily injury and property damage claim frequency for Ontario Territory 6, (the Parry Sound, Bruce Peninsula and Muskoka districts) of 6.05 can be compared to a claim frequency in the same year of 8.84 in Ontario Territory 1, which is the Toronto District.

Claim frequencies are not calculated by territory for all perils and collision coverage since the distribution of the various deductibles is different in different geographical territories. In areas where the cost of insurance is relatively low, most drivers prefer to carry \$50 deductible collision insurance. Where premium rates are high, the majority of drivers tend to carry \$250 deductible collision coverage. It would be misleading to compare collision claim frequencies in a territory where most of the drivers might have \$50 deductible collision coverage with another, where most of the policies might be \$250 deductible. Therefore, claim frequencies for various deductibles of collision and all perils coverages are calculated only on a country-wide basis. The appropriate figures from the 1975 Green Book are reproduced in Exhibits 3 and 4.

(6) Average Cost of Claim

The average cost of a claim is determined by dividing the amount actually paid to, or on behalf of, claimants by the number of claims incurred. The average cost of claims has been increasing each year indicating that either the average accident is becoming more severe or

repair costs are rising substantially, or a combination of both. It is of interest to note that the 1975 average claim cost in Territory 1 (Toronto District) for bodily injury and property damage of \$1,152 (Exhibit 1) compares with an average for the same type of claims in Territory 9 (North Eastern Ontario) of \$1,501.

Again, average cost of a claim is not appropriate for all perils or collision coverages in view of the variety of deductibles.

EXHIBIT 3

LOSS COST (PURE PREMIUM) EXPERIENCE PRIVATE PASSENGER AUTOMOBILE — EXCLUDING FARMERS COUNTRYWIDE EXPERIENCE BY COVERAGE

COVERAGE	POLICY YEAR	CARS INSURED	LOSSES AND LOSS ADJUSTMENT NUMBER EXPENSES INCURRED	OF CLAIMS	CLAIM FREQ. PER 100 CARS INSURED	AVGE. COST PER CLAIM	PROVISION FOR LOSS COSTS AT 1976 RATE LEVEL	ACTUAL LOSS COSTS PER CAR INSURED	LOSS COST RATIO COL.(8)/ COL.(7)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
BODILY INJURY AND PROPERTY DAMAGE	'71 72 73 74 75	4,318,194 4,628,137 4,935,801 5,309,063 4,430,947	329,925,946 387,070,243 439,271,561 520,514,209 460,556,354	418,667 455,457 466,478 484,370 372,887	9.70 9.84 9.45 9.12 8.42	788 850 942 1,075 1,235	118.25 118.29 118.47 118.71 118.63	76.40 83.63 89.00 98.04 103.94	65 71 75 83 88
ACCIDENT BENEFITS (EXCLD. MED.)	'71 72 73 74 75	2,981,664 3,892,673 4,428,038 4,805,725 4,036,038	9,736,646 24,315,574 30,658,687 34,593,585 30,602,916	9,384 29,240 42,917 46,098 40,214	.31 .75 .97 .96 1.00	1,038 832 714 750 761	8.81 8.98 8.99 8.92 8.88	3.27 6.25 6.92 7.20 7.58	37 70 77 81 85
ALL PERILS (\$25 DEDUCTIBLE)	'71 72 73 74 75	186,616 183,464 182,048 184,598 161,749	8,140,937 8,367,005 9,214,544 11,055,443 10,505,059	33,179 32,293 32,200 33,508 28,627	17.78 17.60 17.69 18.15 17.70	245 259 286 330 367	89.15 89.10 89.09 89.19 89.40	43.62 45.61 50.62 59.89 64.95	49 51 57 67 73
ALL PERILS (\$50 DEDUCTIBLE)	'71 72 73 74 75	8,392 8,790 9,155 10,406 10,281	354,856 389,212 512,000 709,839 808,818	1,119 1,199 1,423 1,770 1,774	13.33 13.64 15.54 17.01 17.26	317 325 360 401 456	118.22 119.30 110.14 113.27 116.24	42.29 44.28 55.93 68.21 78.67	36 37 51 60 68
ALL PERILS (\$100 DEDUCTIBLE)	'71 72 73 74 75	2,505 2,708 2,746 3,318 2,893	144,930 200,192 238,694 259,864 273,164	346 400 437 461 482	13.81 14.77 15.91 13.89 16.66	419 500 546 564 567	190.38 182.17 168.05 163.82 162.59	57.86 73.93 86.92 78.32 94.42	30 41 52 48 58
ALL PERILS (\$250 DEDUCTIBLE)	'71 72 73 74 75	1,202 1,261 1,382 1,998 2,217	73,006 63,155 91,626 129,788 228,929	110 87 136 137 212	9.15 6.90 9.84 6.86 9.56	664 726 674 947 1,080	150.49 149.01 145.81 140.85 139.42	60.74 50.09 66.30 64.96 103.26	40 34 45 46 74

EXHIBIT 4

LOSS COST (PURE PREMIUM) EXPERIENCE PRIVATE PASSENGER AUTOMOBILE — EXCLUDING FARMERS COUNTRYWIDE EXPERIENCE BY COVERAGE

COVERAGE	POLICY YEAR	CARS INSURED	LOSSES AND LOSS ADJUSTMENT EXPENSES INCURRED	NUMBER OF CLAIMS	CLAIM FREQ. PER 100 CARS INSURED	AVGE. COST PER CLAIM	PROVISION FOR LOSS COSTS AT 1976 RATE	ACTUAL LOSS COSTS PER CAR INSURED	LOSS COST RATIO COL.(8)/ COL.(7)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
COLLISION (\$25 DEDUCTIBLE)	'71	48,983	1,787,189	6,439	13.15	278	66.43	36.49	55
	72	46,531	1,860,855	6,418	13.79	290	66.07	39.99	61
	73	41,938	1,778,371	5,828	13.90	305	66.07	42.40	64
	74	39,657	1,910,277	5,405	13.63	353	66.23	48.17	73
	75	30,783	2,110,168	5,108	16.59	413	65.66	68.55	104
COLLISION (\$50 DEDUCTIBLE)	'71	167,060	5,358,500	15,808	9.46	339	62.97	32.08	51
	72	162,285	5,758,937	16,298	10.04	353	62.72	35.49	57
	73	149,247	5,740,710	15,614	10.46	368	62.62	38.46	61
	74	141,508	6,291,183	14,759	10.43	426	63.07	44.46	70
	75	128,850	6,111,278	12,907	10.02	473	63.87	47.43	74
COLLISION (\$100 DEDUCTIBLE)	'71	1,610,742	62,098,400	132,260	8.21	470	73.25	38.55	53
	72	1,711,170	73,887,177	153,457	8.97	481	72.68	43.18	59
	73	1,848,774	88,267,327	170,097	9.20	519	72.62	47.74	66
	74	2,019,974	111,629,668	191,491	9.48	583	72.68	55.26	76
	75	2,046,616	126,175,297	191,488	9.36	659	72.15	61.65	85
COLLISION (\$250 DEDUCTIBLE)	'71	816,151	41,663,848	60,197	7.38	692	100.62	51.05	51
	72	906,312	52,967,777	75,142	8.29	705	100.44	58.44	58
	73	1,042,183	67,273,956	86,640	8.31	776	100.60	64.55	64
	74	1,207,780	91,408,990	104,061	8.62	878	100.99	75.68	75
	75	1,298,621	104,475,731	110,040	8.47	949	100.88	80.45	80
COMPREHENSIVE (\$25 DEDUCTIBLE)	'71	3,213,317	36,948,784	231,916	7.22	159	20.97	11.50	55
	72	3,448,021	41,586,768	257,462	7.47	162	20.95	12.06	58
	73	3,747,985	50,064,532	275,815	7.36	182	20.97	13.36	64
	74	4,110,741	65,162,904	313,909	7.64	208	21.09	15.85	75
	75	3,699,672	72,207,847	293,834	7.94	246	21.14	19.52	92
SPECIFIED PERILS (\$25 DEDUCTIBLE)	'71	399,522	2,136,156	8,347	2.09	256	8.77	5.35	61
	72	444,767	2,453,325	9,238	2.08	266	8.78	5.52	63
	73	485,167	2,819,688	9,090	1.87	310	8.77	5.81	66
	74	500,477	3,223,661	9,384	1.88	344	8.76	6.44	74
	75	425,603	3,198,196	8,020	1.88	399	8.75	7.51	86

(7) Provision for Loss Cost at 1976 Rate Level

These are the average loss cost and loss adjusted expense cost provisions underlying the average premiums. An analysis is made of all premiums paid in the latter part of the current year to arrive at the average level of all premiums paid in that period. This analysis would normally be based on the last six months of the year if all companies got their July 1st rate changes into effect promptly. If this were not the case and rate adjustments were postponed for a month or two, the analysis would be based on a shorter period to ensure that it is only the adequacy of the current rates that is tested. This most recent average rate is then reduced by a factor that represents the expense requirements (other than

loss adjustment expenses) and a provision for profit and contingencies. This factor is based on an annual expense survey done by IBC of its members. The factors that are considered in this expense analysis include commissions, taxes and licences, association fees and other operating expense. The expense factors used in 1976 were for Canada in total, 23.9%, for Quebec, 22.6%, and for all other provinces, 24.5%. To these was added a 2.5% profit and contingency factor to get 26.4%, 25.1% and 27.0% respectively overall. These factors are then applied to the average rate level as previously calculated so that the portion of that premium that was a provision for the cost of claims and the allocated claims expense can be arrived at. It is this provision that is given in column (7) for all years. To repeat, it is the lost cost provision built into the most current rate that is shown in this column opposite each of the previous years.

(8) Actual Loss Costs per Car Insured

This column is the total claims cost and claims adjustment expenses incurred for the year in column (3) divided by the number of cars insured in column (2) to get the average dollars actually spent on claims for each car insured in that year. This can then be compared to the loss cost provision built into the most recent rates as calculated in column (7).

(9) Loss Cost Ratio

The loss cost ratio is the ratio that results from the division of column (8) by column (7) or the ratio of actual loss costs to the provision for loss costs in the current rate level. The ratios are indicators of the required changes in the loss provision underlying the current rate level. It is left to the actuary doing the rating to adjust for the projection or trending of the 5 policy years' experience so that each year's experience is at a common level to project to future rating periods.

Differential Complex

There are two underlying principles in setting insurance rates:

- 1) the premiums of the many pay the losses of the few, and
- 2) the premiums should vary with the degree of risk or hazard.

If the first of these was the only consideration, ratesetting would be a much easier task. It would be necessary only to project the total claims and other costs for a year and divide by the number of insureds to get the average premium all would pay. A person using his car a limited amount on weekends would pay the same premium as a salesman using his every day and driving many thousands of miles in a year. The industry considers the same premium for each would be inequitable in view of the probability of accidents each would face.

In order to ensure premiums vary in accordance with the industry's view of the degree of risk or hazard, the insureds in the country are divided into many different classes and groups, and details concerning the coverages they buy and their claims experience are reported in the format called for in the Statistical Plan.

Statistics have been developed that establish that the risk an insurer faces, varies with:

- The area where the policyholder resides,
- The age of the operator and the use to which the vehicle is put,
- The accident (not the conviction) record of the driver,
- The limit on third party liability coverage purchased,
- The deductibles on insured vehicle coverage purchased, and
- The value of the insured's vehicle.

The permutations and combinations facing the ratesetter in Ontario are numerous. In the case of bodily injury and property damage coverage, he is faced with considering 12 territories, 14 age and use categories, 5 driving (accident not conviction) record classes and 6 standard limits. These factors produce 5,040 separate combinations. The number is even greater in the case of collision coverage, since there are 12 territories, 14 age and use classes, 5 driving record classes, 8 automobile rating groups and 4 deductibles resulting in 26,880 different possibilities.

Initially, ratemakers must decide on the extent of their analyses of experience filed in accordance with the Statistical Plan. The information reported to IBC is sufficiently detailed in most aspects to permit detailed analyses of each of the possible combinations of factors, but the time involved would be prohibitive. Further, individual rating analysis would create new problems. The more the total data are divided into smaller groups, the greater the possibility of a chance occurrence affecting the statistics and distorting the conclusion of the analyses. In such circumstances, a single accident could affect the experience in any category so drastically that its effects might be felt for several years and there could be wide fluctuations from year to year.

As a solution, ratemakers have developed the concept of a "differential complex". With this system each of the factors that affect risk to the insurer is analysed on a country-wide basis. For example, the relative risk of each driver age and use class is assessed in relation to a base class. The actuary might analyse the experience of all the drivers in each age and use class across the country relative to all the class 02 drivers and by so doing use a sufficiently large data base that the results would be both credible and stable. After finding the risk of each of the categories within a risk-defining factor relative to one of the factors in the group, the actuary has merely to calculate the correct rate for the base category or class and apply the relativities to get all the others.

An analysis of the Green Book data might indicate, for example, that an 01 driver was about 87% of the hazard of an 02 driver. It would be necessary then only to calculate the 02 premium, and the 01 could be determined by taking 87% of it. It would not be necessary to go through the process of establishing both 01 and 02 rates individually in each territory.

The following is a more detailed look at the various aspects of the differential complex.

(1) Age and Use Categories

There are 14 standard age and use categories now required to be reported in the Statistical Plan. The statistics as evidenced in the Green Book reveal that the class 02 was the largest single class with almost 40% of the drivers in the country. Consequently, this class was chosen as the base relative to which all others would be evaluated.

Over the years, from detailed analyses of the statistics it was found that there were differences in the indicated relativities depending upon whether the experience was from an urban area or from a rural area. As a result, the experience exhibit on which the age and use differentials are based is divided into urban and other-than-urban. This is done by classifying each of the territories in the country and then grouping the data on that basis. At present, in Ontario, territories 1, 2, 2A, 3 and 4 are classified urban and all others, rural.

It is also evident that there are significant differences between the relative risks for bodily injury and property damage coverages and the risk for collision coverages. It appears that some age and use classes are considerably more susceptible to collision (damage to own vehicle) than to third party claims. As a result, separate country-wide experience exhibits have been developed for collision and third party liability and separate relativity tables have been developed for each.

The differentials used by IAO in its 1976 rating programme for all provinces except Quebec were:

Third Party Liability			Collision		
Class	Urban	Rural	Class	Urban	Rural
01	0.87	0.95	01	0.87	0.91
02	1.00	1.00	02	1.00	1.00
03	1.10	1.30	03	1.15	1.40
04 & 13	1.63	1.80	04 & 13	1.99	2.37
06	0.75	0.87	06	0.69	0.92
07	1.24	1.30	07	1.23	1.40
08 & 09	1.40	1.45	08 & 09	1.56	1.92
10 & 11	2.69	3.12	10 & 11	3.68	4.87
12	2.03	2.56	12	2.83	3.77
18 & 19	1.20	1.35	18 & 19	1.60	1.79

These differentials are reviewed each year by IAO to ensure they continue to be appropriate based on the previous years' experience. If the differentials are exactly correct, the loss ratios for each class would be the same. If they are not, an adjustment may be needed. This is tested, for each class, by dividing the loss ratio for that class by the loss ratio for class 02 (the class taken as the standard) and multiplying the answer by the current differential. This gives an indicated new differential (column (3) below) using as an example the Urban-Country-wide Classification Experience Bodily Injury and Property Damage, pages 92 and 93 of the Green Book.

	(1)	(2)	(3)	(4)	(5)	(6)
Class	1975 Differential	Loss Ratio	Raw Indicated Differential	Z	Revised Indicated Differential	1976 Differential
01	.87	.59	.84	.80	.85	.87
02	1.00	.61	1.00	1.00	1.00	1.00
03	1.10	.58	1.05	.40	1.08	1.10
04 & 13	1.70	.55	1.53	.40	1.63	1.63
07	1.24	.62	1.26	.40	1.25	1.24
06	.80	.41	.54	.20	.75	.75
08 & 09	1.40	.60	1.38	.30	1.39	1.40
18 & 19	1.24	.55	1.12	.30	1.20	1.20
10 & 11	2.85	.64	2.99	.40	2.91	2.85
12	2.15	.57	2.01	.30	2.11	2.15

(For the purpose of this calculation, classes 4 and 13, 8 and 9, 18 and 19, and 10 and 11 are combined.)

EXHIBIT 5

CALCULATION OF CREDIBILITY FACTORS

Class	Cars Insured	Claim Frequency per 100 Cars Insured	Number of Claims	Z*
01	2,415,724	7.52	181,662	.80
02	3,036,246	9.05	274,780	1.00
03	446,182	9.39	41,896	.40
04 & 13	316,452	12.02	38,037	.40
07	357,485	12.57	44,936	.40
06	226,888	4.56	10,346	.20
08 & 09	242,947	12.07	29,324	.30
18 & 19	203,604	10.78	21,949	.30
10 & 11	191,157	23.50	44,922	.40
12	160,487	14.97	24,025	.30

* Class 06 with 10,346 claims is the smallest class.

Class 02 with 274,780 claims is the largest class.

If 274,780 claims is taken as 100% credible then class 06 is at least 10% credible.

$$Z = \sqrt{\frac{\# \text{ of claims}}{274,780}}$$

This credibility factor is then used to weight the amount of the revision by taking the sum of Z times the indicated differential and 1-Z times the present differential.

The credibility of the indicated differential is then assessed. If the number of claims in the class being considered is not large enough to cancel the effect of random occurrences, the revision cannot be accepted without due consideration to the possible effects. This is done by calculating a credibility factor *Z* (column 4). The credibility *Z* is based on the number of claims within each class. The rule for establishing the credibility table is that the class with the smallest number of claims should be at least 10% credible and that the class with the largest number of claims should be, at most, 100% credible. The procedure for calculating these credibility factors is summarized on Exhibit 5 for the Urban — Bodily Injury and Property damage coverage. The application of the credibility factors results in the revised indicated differentials (column 5).

This revised indicated differential is then compared to the existing differential and if a difference of more than 2.5% exists, the revised differential is used. If the difference is less than 2.5%, no change is made. The revised 1976 differentials are summarized in column 6 and are compared with those used in 1975 in column 1.

For all classes except 10, 11 and 12 the column 6 figures in the above table agree to the Urban — Third Party liability coverage differentials indicated as used in the 1976 rating programme. In the case of these classes, even though the change is less than 2.5%, a different differential is used due to a change in the expense factor. IAO has used an expense factor of 27.1% (in all provinces other than Quebec) for all other age and use classes. In these 3 classes (single male drivers under 22), IAO has acknowledged, by lowering the expense factor to 22.7%, that expenses have not increased in direct proportion to increases in premiums. This change in expense factor results in a lower differential and thus lower rates for these classes than would otherwise have been the case.

(2) *Driving Record*

The five driving record classifications run from 0 to 5 as described previously depending on the number of years accident free experience the driver has. A driver who has been involved in an accident within the 12-month period preceding the policy date has proven to be more likely to be in another in the next 12 months than a driver with one or more accident free years.

From analyses of past experience the following relativity table for driving record has been developed with:

Driving record 0	.....	1.78
Driving record 1	.....	1.49
Driving record 2	.....	1.31
Driving record 3	.....	1.00
Driving record 5	.....	.90

This table applies to any coverage where driving record is a factor. These differentials are statistically based for driving records 0, 1, 2 and 3. However, there is no credible data for the 5-year differential and an arbitrary decision was made several years ago by some companies to give a 10% discount to these drivers.

The Statistical Plan has been revised to require the reporting of the driving record 5 experience. 1976 is the first year that the 5-year accident-free experience has been given in the Green Book and it was felt that the actual experience was not yet credible enough to use in a differential decision. As a result, all of the driving record differentials from the previous year were left unchanged for 1976 with the intent of revising them in the future.

(3) Automobile Rating Classes

It is assumed by the industry that an inexpensive vehicle can do just as much damage to a third party as an expensive one. Therefore, no account is taken of the value of the insured's vehicle in the risk exposure for third party liability coverage or accident benefits. On the other hand, the value of the vehicle bears a very definite relationship to the insurer's exposure when it comes to collision, comprehensive, all perils and specified perils coverage. For this reason, all motor vehicles are divided into a minimum of eight categories ranging from category 1 (the least expensive) to category 8 (the more expensive) with provision made as well for special rates on luxury cars that are beyond the upper limit of category 8.

There are no historical data developed for the categorization of vehicles comparable to those that are prepared as the bases of age and use and driver record differentials. The classification of all makes of automobiles into the eight categories is done on the basis of new list prices at Toronto. A sample page of the IAO classifications is set out in Exhibit 6. While investigations of alternative methods of classification have been carried out from time to time, no more suitable basis has yet been found and accepted. Vehicles tend to stay in the same rating group for two or three years rather than drop a category each year as they depreciate. The ratemakers have concluded that using depreciation as the method of valuation would only be appropriate in the case of the total loss of a vehicle and since total losses account for only a small percent of collision claims using it alone would be too rapid a regrouping procedure. Most collision, all peril, comprehensive or specified perils claims are for partial loss and repair costs as the costs of replacement parts are usually just as high for used vehicles as for new ones.

EXHIBIT 6

Convertibles shall be rated one Rate Group Higher than shown hereunder.

MAKE & MODEL	RATING GROUP								
	1977	1976	1975	1974	1973	1972	1971	1970	1969
	Earlier								
CHEVROLET (Cont'd.)	KEY (A)						400 & 300	400 & 330	350 & 300
	(B)								
	(C)	UY	RY	RY	LKUW				
Chevelle De Luxe 6 cyl.				4	3	2	2	1	
Chevelle De Luxe 8 cyl.				4	3	2	2	1	
Chevelle SS, 396, 400 and 454						3	3	2	
Chevette Scooter 2 Pass. 4 cyl.		5							
Chevette 4 Pass. 4 cyl.		6							
Laguna & Malibu Landau 8 cyl.		7	7	6	5				
Malibu Classic & Landau 6 cyl.		6	6	5	4	4	3	2	1
Malibu 8 cyl.		6	6	6	5	4	3	3	1
Malibu Classic 8 cyl.		7	6	6					
	KEY (A) (B) (C)	UY			LW	300	300	350 & 327	
Chevy II 4 & 6 cyl.									1
Chevy II 8 cyl.									1
Nova Hatchback, Concours 6 cyl.		6	6	4	3	2	1	1	1
Nova Custom, Nova LN 6 cyl.		6	6	5	3	2	1	1	1
Nova, Nova Custom and LN Concours 8 cyl.		6	6	5	4	3	2	2	1
Nova S.S. (Super Sport)							3	2	
Corvair and 500									1
Corvair Corsa and Monza									2
Corvette and Stingray	A	8	8	7	7	6	6	5	
Monte Carlo, Monte Carlo S & Landau 8 cyl.		7	7	6	5	5	4	4	
Monte Carlo S.S.						4	4		
Monza 2 + 2 Hatchback Coupe & Towne 4 cyl.		6	6						
Vega 2 Dr. 4 cyl.		5	5	3	2	2	1		
Vega LX Hatchback 4 cyl.		6	6	4					
Station Wagons									
Vega Kammback Wagon 4 cyl.		6	6	4					
Vega Estate Kammback Wagon, Malibu		7	6	5					
Caprice and Kingswood Estates, Belair and Impala, Malibu Classic & Estate		7	7	7	6	6	5		
All other Chevrolet Station Wagons		7	7	6	5	5	4	4	2
	KEY (A) (B) (C)	STW	TVWU	TVWU	TUVWX	455 & 320	350 & 320	350 & 310	
OLDSMOBILE									
Delta 88 8 cyl.		7	7	6	5	5	4	4	3
Delta 88 Royale 8 cyl.		7	7	7	6	6	4	4	3
F-85 6 cyl.							3	2	1
F-85 8 cyl.						4	3	3	2
Cutlass and "S" 6 cyl.		6	6				3	3	1

EXHIBIT 6 (cont'd)

Convertibles shall be rated one Rate Group Higher than shown hereunder.

MAKE & MODEL	RATING GROUP							
	1977	1976	1975	1974	1973	1972	1971	1970 1969 Earlier
OLDSMOBILE (Cont'd.)	KEY (A)						455 & 350 & 350 &	
	(B)						320 320 310	
	(C)							
		STW	TVWU	TVWU	TUVWX			
Cutlass Salon 8 cyl.		7	7	6	5	4	3	2
Cutlass Supreme, Salon, Brougham								
6 cyl.		7	7	6	5	5	4	2
4-4-2 and W 30 Machine							4	3
88 Series and Jet Star					5	5	4	3
Starfire			7	7	6	6	5	4
Toronada, 98, Luxury, Regency, Series		8	8	7	6	6	5	4
Omega F 85 6 cyl.		6	6	5	4			
Omega Salon Hatchback and- Brougham 6 cyl.		6	7					
Station Wagons								
Custom Cruiser		7	7	7	6	6	5	5
Cutlass Supreme Vista Cruiser		7	7	6				
All other Oldsmobile Station Wagons		7	7	7	5	5	4	3

July, 1976

It is recognized, however, that the total value of the automobile, even for repair purposes, decreases with the passage of time and thus most vehicles after staying in the same rating class for two or three years descend one level and in subsequent years further levels.

The 1976 relativity table for the eight automobile rating groups is as follows, with Group 4 as the base:

Group 1	.60	Group 5	1.18
Group 2	.71	Group 6	1.39
Group 3	.84	Group 7	1.64
Group 4	1.00	Group 8	1.94

These are the same relativities that have been in effect for about the last ten years.

(4) Limits on Bodily Injury and Property Damage Coverage

Third party liability policies have historically been issued with limits ranging from \$35,000 to \$1,000,000. It is interesting to note, however, the Statistical Plan requires only that all transactions be reported for policy limits \$35,000, \$50,000, \$100,000 and \$200,000 and over (including policies with \$300,000, \$500,000 and \$1,000,000 limits). Therefore, any conclusions concerning experience for higher coverages are based on the opinion of the ratemaker rather than statistical fact.

The relativity table for various limits of third party liability coverage used in the 1976 rating programme is as follows:

\$ 35,000 inclusive	1.00	\$ 200,000 inclusive	1.21
\$ 50,000 inclusive	1.09	\$ 300,000 inclusive	1.25
\$100,000 inclusive	1.15	\$ 500,000 inclusive	1.29
		\$1,000,000 inclusive	1.36

(5) *Collision Deductibles*

Of the slightly more than 3.5 million private passenger automobiles that were reported in the Green Book for 1974 as carrying collision coverage, 2.1 million had purchased the \$100 deductible. For this reason, the \$100 deductible was taken as the base coverage with the cost of the others expressed relative to it. A \$250 deductible policy would cost less than a \$100 deductible since the insurer would not be at risk for any accident between \$100 and \$250 and also since the cost to the insurer of each accident over \$250 would be reduced by \$150. The opposite would be true of a \$25 deductible policy.

Based on analyses of the country-wide experience the following relativity table for use in the 1976 rating programme was produced.

\$ 25 deductible	1.40
\$ 50 deductible	1.20
\$100 deductible	1.00
\$ 50 deductible .....	.70

Using this table, the actuary need only determine an appropriate rate for a \$100 deductible coverage. Premiums for other deductibles can be calculated then very easily from the table.

(6) *All Perils Deductibles*

Vehicles covered under all perils coverage, almost all carried the \$25 deductible policy. Using the \$25 deductible premium as the base, or 100 percent, the actuary produced the following relativity table:

\$ 25 deductible	1.00
\$ 50 deductible .....	.85
\$100 deductible .....	.70
\$250 deductible .....	.45

(7) *Comprehensive and Specified Perils Differentials*

Since almost all coverage for comprehensive and specified perils insurance is placed on a \$25 deductible base, the actuary established the appropriate premium rate for such coverage for each of the eight au-

tomobile rating groups. The relativity table is then as follows for comprehensive coverage:

\$25 deductible	1.00	
Full coverage	2.00	with minimum additional premium of \$5
\$50 deductible .....	.75	

For specified perils the differential is as follows:

\$25 deductible	1.00
Full coverage	2.00

(8) *Summary*

In summary, to find the appropriate premium for each of the various types of insurance coverage, it is necessary to consider each of the following factors:

(a) Bodily injury and property damage:

- (1) Geographical territory
- (2) Age and use category
- (3) Driving record
- (4) Limits

(b) Collision and all perils coverage:

- (1) Geographical territory
- (2) Age and use category
- (3) Driving record
- (4) Automobile rating group
- (5) Deductible

(c) Comprehensive and specified perils coverage:

- (1) Geographical territory
- (2) Automobile rating group
- (3) Deductible

Accident benefits coverage is deemed to be unaffected by any of these factors and, thus, there is just a single rate for all drivers in all territories of the province.

As a result of the development of each of the relativity tables — referred to collectively as the differential complex — based on country-wide experience, the actuary has effectively considered all of the categorizations outlined except for the geographical divisions. Thus, it is apparent that if he can analyse the statistics within a geographical territory and, thereby, produce the appropriate premium rate for a single category, the base rate, the premiums for all other classifications can be projected from it by using the Relativity Tables.

The Calculation Procedure

The ratemaker uses as a base the statistical exhibit of the loss experience of the past. From this experience he develops the change that is required in current premiums to meet his estimates of future claims costs. In previous years, only industry-wide data have been available in the Green Book. In 1976 for the first time, the Green Book private passenger exhibits have been broken down, as well, between IAO member and non-IAO member experience. As a result, IAO was able to rate on the experience of its own members.

As previously described, the Green Book for the current year is on an earned basis so that the number of cars insured reflects as closely as possible, the exposure to date for that year and permits the calculation of a loss cost per car insured. When IAO actuaries reviewed the bases used in preparing the 1975 Green Book, they felt that the earned factors used should be adjusted to reflect more accurately IAO data. The factors in the IAO portion of the Green Book and IAO's adjusted factor are as follows.

	Factor in IAO Green Book	IAO Factor
	(1)	(2)
Bodily Injury and Property Damage	.7787	.77
Accident Benefits	.7787	.77
Collision	.9297	.92
Comprehensive	.8162	.81
Specified Perils	.8789	.87

The next step in the procedure was a calculation of what IAO has called a raw indication of rate level increase needed. This raw indication was first calculated for the province as a whole for each of third party liability, accident benefits, collision, comprehensive and specified perils as in the following table, using the 1975 actual loss cost per car insured figures adjusted for the change in earned factor.

		Provision for Loss Costs at 1976 Rate Level	Actual Loss Cost per Car Insured	Raw Indication
		(1)	(2)	(2) ÷ (1)
Bodily Injury and Property Damage	'74	103.26	92.24	.89
	'75	103.25	100.21	.97
Accident Benefits	'74	11.14	9.98	.90
	'75	11.14	10.66	.96
Collision	'74	71.21	55.82	.78
	'75	71.29	63.49	.89
Comprehensive	'74	16.62	13.76	.83
(\$25 Deductible)	'75	16.67	16.91	1.01
Specified Perils	'74	7.42	5.25	.71
(\$25 Deductible)	'75	7.43	5.95	.80

The raw indication is the ratio of the actual loss costs per car insured divided by the provision for loss costs at the 1976 rate level. It provides

an indication of the adjustment that, if applied to the 1976 pure premium, would just cover the actual loss costs of either of the two previous years.

Similar raw indications were calculated for each of the 12 territories within the province. In the case of the territorial calculations, the credibility of the data was considered. If there were more than 1,084 claims, the indications were allowed to stand. If there were less than 1,084 claims the data were considered to be insufficiently credible to stand on their own so a weighted average with the provincial data was calculated with the weighting being based on a credibility factor as follows:

$$Z = \sqrt{\frac{(1974 \text{ Number of Claims} \times .40) + (1975 \text{ Number of Claims} \times .60)}{1,084}}$$

The 40/60 weighting is used here to apply more weight to the more current 1975 data than to the 1974 data. An adjusted raw indication was then calculated, this being the sum of Z times the territorial raw indication and (1-Z) times the provincial raw indication. Thus, the less credibility the territorial indication has the more weight is given to the provincial indication.

All the raw indications, (for the province as a whole and each territory) provide the ratemaker with an indication of the adjustments needed to 1976 rates to just pay 1974 or 1975 claims. The ratemaker must now calculate the cost of paying either the 1974 or 1975 claims if they had occurred in the 1977 policy year for which he is preparing the rating programme.

Using as a base, the statistical exhibit of the loss experience of the past, the ratemaker performs three calculations to determine the costs to pay future claims and, therefore, the premiums required. IAO has defined these three calculations as:

- 1) "A calculation of the ultimate cost of settling the losses which occurred during the two previous fiscal policy years but which remained unsettled at the end of the year or had not yet been reported to the insurer. This process is known in the trade as 'Loss Development'.
- 2) As rates must be determined from statistics on claims settled in a previous time period, a calculation must be made to determine what it would cost to settle those claims today. This is basically a process of determining what change has taken place in claim payments as reflected in the actual loss experience. This process is known as 'trending' and it simply brings the known loss costs of a previous time period up to current cost levels.

- 3) A calculation of the *future* cost of losses. Using today's loss costs as a base, a determination must be made of the cost of losses which will occur in the future fiscal policy year to which the rating programme is intended to apply. This process is known as 'projection'. It is that point in the ratemaking process where the cost of the product must be determined before the cost of the raw materials is known. To perform the calculations, estimates are made of future changes in wage and salary levels; the future cost of hospital and medical care; the future cost of repairs to vehicles and property; future trends in awards for general damages, all of which cause changes in insurance loss costs."

The first of these, loss development, will be dealt with in a latter part of the calculation.

The factors used in the second and third of these calculations to trend the 1974 policy year results to 1975 levels and then to project the 1974 adjusted and 1975 policy year results to 1977 levels are displayed in the following table.

	To Adjust from 1974 to 1975 Levels	To Project from 1975 to 1976 Levels	To Project from 1976 to 1977 Levels	1974-1977 (4)	1975-1977 (5)
	(1)	(2)	(3)	(1) × (2) × (3)	(2) × (3)
BI & PD	1.150	1.145	1.124	1.480	1.287
Collision	1.170	1.170	1.150	1.574	1.346
Comprehensive	1.180	1.170	1.150	1.588	1.346
Specified Perils	1.160	1.170	1.150	1.561	1.346

The column (1) figures represent the percentage increase in the average cost of a claim from the 1974 policy year to the 1975 policy year. The column (2) and (3) figures represent the projected increases in the average loss cost from 1975 to 1976 and from 1976 to 1977 respectively. While bodily injury and property damage average cost per car has risen 15% from 1974 to 1975, it is projected to increase a further 14.5% and 12.4% from 1975 to 1976 and 1976 to 1977. The total increase for the period is determined by multiplying together the individual factors so that the increase from 1974 to 1977 is $1.150 \times 1.145 \times 1.124$ or 48.0% and the increase from 1975 to 1977 is 1.145×1.124 or 28.7%.

The method of developing these projection factors (columns (2) and (3)) was described in a memo prepared by IAO as follows. References to appendices in this memo are to appendices to the IAO rate filing.

1976 Automobile Rating Programme Trend Factors

"In the past rate reviews, trend and/or projection factors were frequently, if not entirely, based on the statistics of the insurance

companies themselves. A method of curve fitting was generally employed against loss cost data. While this approach may have produced satisfactory results in the past, periods of normal or static circumstances, it became quite evident in 1975 that other indices should be used to measure future costs. Economic conditions that exist in the present inflationary environment and the projection into the future can better be measured by a combination of past insurance data and external business indices.

“Accordingly, studies were conducted to determine which of several external indices more appropriately measured future automobile insurance loss costs and these were incorporated into the IAO 1976 Automobile Insurance Programme. The indices finally adopted were Automobile Repair — Labour and Parts, Average Weekly Wages and Salaries and Consumer Price Index.

“The actual data as promulgated by the respective source for each of these indices is contained in Appendix II of the rate filing. The following is a presentation of how each of these indices was then translated into an appropriate trend factor used to develop the filed rate indication by coverage.

Automobile Repair — 1975/1976

Type	Projection (%)	Weight	Average
Labour	17.6	.55	9.68
Parts	20.0	.45	9.00
			18.68 (18.7)

Notes:

1. The Labour projection was based on a country-wide average (Exhibit 7, Appendix II) with each Province weighted by exposures.
2. The Parts projection was based on judgement after a review of Exhibits 5 and 6, Appendix II.
3. The 55/45 weight is that used by Statistics Canada.

Bodily Injury and Property Damage

Type	1975/1976 Projection (%)	Weight	Average	1976/1977 Projection (%)
Wages	12.8	40	5.12	4.10
C.P.I.	9.5	20	1.90	1.52
Auto Repair	18.7	40	7.48	6.73
			14.50	12.35 (12.4)

Notes:

1. The Wages projection was based on a country-wide average (Exhibit 1, Appendix II), with the actual projection supplied by the Conference Board.
2. The C.P.I. was a projection based on data found in Exhibit 2 of Appendix II.
3. The 40/20/40 weights were determined on the basis of the following observations:
Loss Costs for Bodily Injury consist of 80% wages and 20% C.P.I. factors. Property Damage consists of 20% C.P.I. and 80% Auto Repair factors. Overall Bodily Injury and Property Damage are weighted 50/50. Thus, the 40/20/40 weights.
4. The 1976/1977 projection took into account the anticipated improvements as a result of the Anti-Inflation Board action. Therefore, the 1975/1976 factors were discounted 20% for Wages and C.P.I. and 10% for Auto Repair. The latter takes into consideration the fact that many automobile parts are produced outside of Canada and not subject to the same pricing restraints.

Physical Damage

Type	1975/1976 Projection (%)	Weight	Average	1976/1977 Projection (%)
C.P.I.	9.5	20	1.90	1.52
Auto Repair	18.7	80	14.96	13.46
			16.86 (17.0)	14.98 (15.0)

Notes:

1. The 20/80 weighting was judgemental based on the fact that some comprehensive losses are influenced more by the C.P.I. than the cost of automobile repairs.
2. Again the 1976/1977 projection was the result of discounting the 1975/1976 indications in anticipation of actions taken by the Anti-Inflation Board.

“It is felt that the approach rather comprehensively described above adds an improved methodology to the IAO 1976 Automobile Rating programme. It is imperative that advisory rates be adequate, stable and responsive and this type of loss trending technique appears to fulfill these requirements. Certainly, in the light of the present inflationary period, past insurance statistics as the sole indication of future loss costs cannot be considered as the sole criteria.”

The trend and projection factors, as calculated, could now be applied to the 1974 and 1975 raw indications. These raw indications were the adjustment that, if applied to the 1976 pure premiums, would allow these premiums to just cover the actual loss costs of these two years. These were calculated as .89 for 1974, and .97 for 1975 for the province as a whole for bodily injury and property damage. These raw indications have been summarized in columns (1) and (2) of Exhibit 7.

EXHIBIT 7
BODILY INJURY AND PROPERTY DAMAGE — PROVINCE OF ONTARIO
Calculation of Preliminary Rate Level Indication

	1974 Adjusted Raw Indication (1)	1975 Adjusted Raw Indication (2)	1974-1975 Trend (3)	1975-1977 Trend (4)	$(1) \times (3) \times (4) \times .40 +$ $(2) \times (4) \times .60$ (5)	Distribution of Large Losses (6)	Preliminary Rate Level Indication $(5) \times (6)$ (7)
Province	.89	.97	1.15	1.287	1.276	1.0000	1.276
Territory 1	.95	1.03	1.15	1.287	1.358	1.0050	1.365
Territory 3	.86	.97	1.15	1.287	1.258	.9831	1.237
Calculation of Final Rate Level Indication							
	Preliminary Rate Level Indication (7)	Correction for Off-Balance (8)	Adjustment for Expenses (9)	Adjustment for Legislative Changes (10)	Adjustment for Loss Development (11)	Final Indication $(1) \times (2) \times (3) \times (4) \times (5)$ (12)	
Province	1.276	1.0000	.989	.9475	1.021	1.221	
Territory 1	1.365	.9962	.989	.9475	1.021	1.301	
Territory 3	1.237	.9962	.989	.9475	1.021	1.179	

EXHIBIT 8

PROCEDURE FOR DISTRIBUTION OF LARGE LOSSES

Continuing our example of bodily injury and property damage and looking at territory 1, the following can be obtained from the Green Book for 1974 and 1975 combined:

	Ontario Urban	Ontario Territory 1
Total Losses	\$133,921,371	\$71,910,418
Excess Losses	8,154,108	4,040,705
Total — Excess	\$125,767,263	\$67,869,713

From this, it can be calculated that 53.96% of the Ontario urban claims (after deducting the excess losses) are in territory 1. Therefore, territory 1 should get 53.96% or \$4,400,282 of the excess losses. This is \$359,577 more than it actually had in the two years so that the loss experience and thus the indications must be increased by $\frac{359,577}{71,910,418}$ or .005. As a result, a factor of 1.005 is applied.

If the trend and projection factors are applied to these to bring both to 1977 levels, the result would be two separate estimates of the adjustment needed. Rather than use any one of these, a weighted average of the two is taken. The weighting used for this is 40% of the 1974 indication and 60% of the 1975 indication to give a slightly higher weight to the more current data. The result of this (column 5) is an initial indication of the change needed in the 1976 rates.

To this indicated adjustment in the case of bodily injury, and property damage is now applied a factor for the distribution of large losses. This is done to spread large losses equitably over the province. Since losses over \$50,000 are relatively rare (there were only 88 in 1974 and 79 to December 31, 1975 in 1975), it is felt that it could unfairly penalize any one territory that by chance had more than its share of these losses in one year. As a result, these excess losses are redistributed over all the territories in the province using a separate distribution for urban and rural territories.

The procedure for distributing these losses is summarized in Exhibit 8 where a factor of 1.005 was developed for Ontario territory 1. Similarly, in territory 3, a factor of .9831 was developed. Both of these factors appear in column 6 of exhibit 7.

Applying these factors to the column 5 figures which were the weighted average of the projected raw indications gives what IAO calls a preliminary rate level indication (column 7). This is the indicated change required in the 1976 base rate by territory so that the 1977 rates will be adequate to cover the projected costs of the year. Rather than using the

preliminary rate level indications as calculated, IAO further refines them through four additional adjustments. These are:

- 1) correction for off balance — column (8)
- 2) adjustment for expenses — column (9)
- 3) adjustment for legislative changes — column (10)
- 4) adjustment for loss development — column (11)

Factors are developed for each of these adjustments (as detailed later) and then applied to the preliminary rate level indications to arrive at a final indication of the change needed in the 1976 rate level (column 12).

1) Correction for Off Balance

The use of a provincial indication and partial credibility procedures introduces the requirement for a correction for what IAO calls “off balance”. This “off balance” correction is designed to ensure that the total projected premiums for all the territories equals the total premium requirements originally projected for the province as a whole. The territorial correction required for the bodily injury and property damage coverage (exhibit 7) was .9962.

For the 1976 rating program, an adjustment for the expense ratio factor was made.

2) Adjustment for Expenses

The need for this adjustment arose because of the substantial increases in individual premiums in recent years. These premium increases were largely to cover increased claims costs rather than increases in administration expenses. Since the claims costs were rising at a greater rate than the administration expense, it was decided to lower (from 9.4 to 8.6%) the administration expense component of the expense factor build-up. The resulting expense factor and expected loss ratio are as follows:

	Canada (Ex. Quebec)	
	<u>1975</u>	<u>1976</u>
Commission and Profit Commission	13.8	13.8
Taxes and Licenses*	2.2	2.2
Profit and Contingency	2.5	2.5
General Administrative Expenses	<u>9.4</u>	<u>8.6</u>
Total Expenses and Profit	27.9	27.1
Expected Loss Ratio	<u>72.1</u>	<u>72.9</u>
	<u>100.0</u>	<u>100.0</u>

*(In Ontario, one additional change had to be made due to the increase in the premium tax from 2% to 3% effective April 7, 1976. This change was reflected directly as part of a later calculation in the expense loading of the pure premium.)

The ratio of the old expected loss ratio (72.1) to the new expected loss ratio (72.9) gives the correction factor (.989) indicated in column 9 of exhibit 7.

3) *Adjustment for Legislative Changes*

IAO, in its 1976 rating programme, also attempted to include the effect of recent legislation changes such as the compulsory use of seat belts and the lower speed limits even though the actual effect of these changes is not sufficiently conclusive to be reflected in credible statistical data. A reduction for Private Passenger vehicles of 5.25% for bodily injury and property damage and 2.5% for collision was used throughout the province. The adjustment for bodily injury and property damage is reflected in column 10 of exhibit 7.

4) *Adjustment for Loss Development*

Before the indications can be used, any correction for loss development must be applied. This was the first of the three calculations in ratemaking previously referred to on page 293. The Green Book data assume that any policy years' losses will be fully developed in 42 months. In IAO's opinion, development factors based on 66 months are more appropriate. For the first time in 1976, IAO adjusted the Green Book data by using the following assumptions:

	IBC	IAO	IAO
	30-42 Months	30-42 Months	42-66 Months
BI & PD	1.042	1.048	1.015
Collision	.980	—	.985
Comprehensive	.998	—	—
Specified Perils	.998	—	—

To prepare the following loss development factors:

	Factor
BI & PD	$\frac{1.048}{1.042} \times 1.015 = 1.021$
Collision	.985
Comprehensive	1.000
Specified Perils	1.000

The bodily injury and property damage factor is reflected in column 11 of Exhibit 7.

The final indications column 12 of Exhibit 7, are the percent changes that must be applied to the 1976 base premium for each territory and coverage in order to determine the 1977 base premiums required.

One further adjustment was required in developing the 1977 base rates. Since some of the class differentials were changed (to reduce the

expense factors), a second off balance calculation was required to ensure that only the increases, as indicated by the cost trending, were reflected in the proposed rate increases. An example of the calculation for the Urban — bodily injury and property damage coverage is summarized on the following page (Exhibit 9).

As indicated in this exhibit, if the differential change had been applied retroactively, the premium earned in previous years would have been less than was actually the case with the previous differentials. This change in differentials would have a similar effect on the 1976 premium which has been used as a base for the calculation of the increases needed for 1977. Thus, the 1.005516 factor must be applied to the 1977 base rate to compensate for the change.

In practice, these indications are applied to the previous year's pure premium. This is done by applying the current year's loss ratio to the previous year's total base premium for the territory and coverage. This base premium is then multiplied by the indication for that territory and coverage and also by the correction for off balance resulting from differential change. The result is then divided by the loss ratio to get the revised base premium. In Ontario's case for 1976, the loss ratio used to load the expense back on the premium was different from that used in the first step to unload it, 72.9 initially vs. 71.9 in the final step. This recognizes the change in premium tax that was ignored up to this point.

Once the base premium has been calculated for each of the coverages in each of the territories, it is a simple matter to calculate the premium for each of the other classes and exposure limits using the previously discussed differentials. For example, having a base premium for third party liability in territory 1 of \$150 (recall that the base premium is for the 02 class, 3 years accident-free and \$35,000 limit) it is possible to get the premium for class 08, 1 year accident-free and \$500,000 limit by applying the respective limits, i.e. $\$150 \times 1.40 \times 1.49 \times 1.29$ or \$404. This agrees with the premium in the exhibit from the IAO rate manual on the following page (Exhibit 10). This calculation is repeated to get each of the other premiums. The premium an insured must pay can be determined from the rate manual once the age and use class, the driving record, the liability limits and the deductibles of the insured are known.

EXHIBIT 9 **OFF BALANCE CALCULATION FOR DIFFERENTIAL CHANGES** **URBAN — BODILY INJURY AND PROPERTY DAMAGE.**

DIFFERENTIALS			
Class	Present	Indicated	
04 & 13	1.70	1.63	
06	.80	.75	
18 & 19	1.24	1.20	
Actual			
Class	Premiums Earned Jan./73-June/75	Differential Change	Resulting Earned Premium
	(1)	(2)	(1) × (2)
04 & 13	\$ 86,839,592	<u>1.63</u>	\$ 83,263,844
		1.70	
06	32,310,799	<u>.75</u>	30,291,374
		.80	
18 & 19	<u>42,028,680</u>	<u>1.20</u>	<u>40,672,916</u>
		1.24	
Total	<u>\$161,179,071</u>		<u>\$ 154,228,134</u>
Present Earned Premium (total all classes)			\$1,267,194,356
Earned Premium (resulting from differential change)			1,260,243,419*

$$\text{Factor} = \frac{1,267,194,356}{1,260,243,419} = 1.005516$$

$$* (1,267,194,356 - 161,179,071 + 154,228,134 = \$1,260,243,419)$$

This procedure was carried out separately for Urban Third Party, Urban Collision \$100 Deductible, Other-Than-Urban Third Party and Other-Than-Urban Collission \$100 Deductible.

EXHIBIT 10
IAO RATING MANUAL — ONTARIO,
TERRITORY 1, THIRD PARTY LIABILITY

ONTARIO — TERR. 1

PRIVATE PASSENGER SECTION

STAT. CODE	THIRD PARTY LIABILITY						STAT. CODE	THIRD PARTY LIABILITY						STAT. CODE	THIRD PARTY LIABILITY							
	INCL. LIMITS IN 000'S							INCL. LIMITS IN 000'S							INCL. LIMITS IN 000'S							
	35	50	100	200	300	500		35	50	100	200	300	500		35	50	100	200	300	500		
01	5	117	128	135	142	146	151	5	101	110	116	122	126	130	5	363	396	417	439	454	468	
	3	131	143	151	159	164	169	3	113	123	130	137	141	146	3	404	440	465	489	505	521	
	2	171	186	197	207	214	221	06	2	147	160	169	178	184	190	2	529	577	608	640	661	682
	1	194	211	223	235	243	250	1	168	183	193	203	210	217	11	1	601	655	691	727	751	775
0	232	253	267	281	290	299		0	200	218	230	242	250	258	1	718	783	826	869	898	926	
02	5	135	147	155	163	169	174	5	167	182	192	202	209	215	5	274	299	315	332	343	353	
	3	150	164	173	182	188	194	3	186	203	214	225	233	240	3	305	332	351	369	381	393	
	2	197	215	227	238	246	254	07	2	244	266	281	295	305	12	2	399	435	459	483	499	515
	1	224	244	258	271	280	289	1	277	302	319	335	346	357	1	454	495	522	549	568	586	
0	267	291	307	323	334	344		0	331	361	381	401	414	427	0	542	591	623	656	678	699	
03	5	149	162	171	180	186	192	5	189	206	217	229	236	244	FOR OTHER THIRD PARTY LIMITS USE INCLUSIVE LIMITS TABLE IN THE GENERAL SECTION							
	3	165	180	190	200	206	213	3	210	229	242	254	263	271								
	2	216	235	248	261	270	279	08	2	275	300	316	333	344								355
	1	246	268	283	298	308	317	09	1	313	341	360	379	391								404
0	294	320	338	356	368	379		0	374	408	430	453	468	482	ACCIDENT BENEFITS — \$16.00							
5	220	240	253	266	275	284	5	162	177	186	196	203	209									
3	245	267	282	296	306	316	3	180	196	207	218	225	232									
04	2	320	349	368	387	400	413	18	2	236	257	271	286	295								304
13	1	364	397	419	440	455	470	19	1	268	292	308	324	335	346							
0	435	474	500	526	544	561		0	320	349	368	387	400	413								

HIGH PERFORMANCE AUTOMOBILES, as defined in Rating Group Tables

Third Party Liability) Driving Record 0, 1 & 2 — Table Premium plus 20% Comprehensive) Table Premium plus 20%

All Perils) Driving Record 3 & 5 — Table Premium plus 10% Compified Perils)

Collision)

VARIATIONS FROM IAO'S RATEMAKING PROGRAMME

IAO develops its rate manual for its members and distributes copies to them. Each member is free to use the manual as it is or amend the suggested premiums as each sees fit. While non-members of IAO seem to use IAO's advisory rates as a bench mark, many of them have rate manuals that differ. The purpose of this section is to review some of the variations in procedures, factors, base data, etc. used by insurers in the province under the following headings:

- Statistics,
- Differentials, and
- Calculation procedures

Statistics

The IAO private passenger rating programme uses, as a statistical base, the experience of its members as summarized in the Green Book with the exception that class differentials are based on all industry data. The IAO exhibit is only one part of the Green Book. In addition, private passenger experience is summarized by total industry and non-IAO members. An individual company in setting its rates could use any of the Green Book data or any other information which it felt most closely approximated its own experience.

Some larger companies put considerable emphasis on analyzing their own loss experience as a base for their rating programmes. Generally, small insurers do not have a large enough group of insureds for their data to be credible. Some of the large American companies make use of their U.S. experience and make adjustments they consider appropriate to reflect Canadian experience and trends.

Differentials

IAO uses differentials or relativities for:

- 1) age and use classes
- 2) driving record
- 3) rating groups
- 4) third party liability limits
- 5) collision deductibles
- 6) all peril deductibles
- 7) comprehensive and specified peril deductibles.

All companies, IAO members and non-IAO members, appear to use differential systems that are similar. There are, however, many examples of individual companies diverging from the specific IAO structure. In the case of age and use classes, it appears that all companies use, as a minimum, a breakdown the same as IAO's, since all are required to

report on this basis. The IAO class structure was used by all the IAO members we interviewed. Some non-IAO members have increased the number of classes with the introduction of more age groupings and different mileage cut-off points.

It is in the use of driving record differentials that the most variations are found. While most companies use a 0, 1, 2, 3, and 5 year accident-free structure the differentials developed by some companies penalize the driver with an accident record more severely. Not all companies have a 5 accident-free year differential. Some other companies with such a program require that the 5-year accident free experience must occur while insured with them.

One insurer combined its driver record differentials with an insured conviction and years of driving experience record. Another had a system, where in most cases, it did away with the differential approach but had a claim service fee which it charged claimants in the case of an accident. This claim service fee paid on each renewal for 2 years after an accident varies with the cost of the accident and is designed to have claimants help pay for the cost of adjusting and processing the claim.

In all cases, auto rating groups similar to IAO's were used although the groups were not always the same. Several companies used more than eight rating groups. As well, some insurers used a system under which a car stayed in the same group for its life, but its vintage was recognized by means of age classification i.e. a car might be a group 5, age group 3.

At the lower liability limits for third party liability coverage, the structure and even the differentials were virtually identical with all insurers. At the higher limits, one company applied a flat dollar increase to the next level rather than a percentage increase.

All companies seem to use similar all perils, comprehensive, and specified perils deductibles.

The Calculation Procedure

There was wide variety in the procedures used by individual companies in calculating premiums for 1976.

Some IAO members adopted IAO's suggested rates without change.

Other companies (IAO and non-IAO members) adjusted the IAO rates by a fixed percentage. They did so either on the basis of their own experience or as part of a marketing decision in the development of business in a particular area.

Some companies used a suggested set of indications calculated by IBC rather than those suggested by IAO. These indications were then

applied in exactly the same manner as IAO's. Each year the IBC prepares an interpretation of the Green Book data (distributed to its members only) and part of this interpretation is an analysis of the apparent adjustment needed to current rates. While the calculation procedures used are generally similar to IAO's, the results vary from IAO's indications since IBC's use all industry data as a base. As well, there were slight differences in the trending factors used.

One company, an IAO member, reworked the IAO rating programme using a combination of the assumptions used in the IAO and the IBC indications. This was done in an attempt to reflect their own experience better.

Some companies use an approach that is completely different from that used by IAO. While the IAO program is based on analyses of data on a policy year basis, these companies instead collect and analyse their own experience on a calendar year basis. With this approach the premiums earned in the year are compared to the losses incurred in the year. The underlying concepts of this approach and its disadvantages were set out on page 277. Adjustments to the reserves for previous years' losses incurred, but not yet paid, are treated as part of the losses incurred of the year in which the adjustment took place. If the estimate of loss amounts on the previous years' claims is inaccurate, this method could lead to substantial difference in the matching of premiums and the costs they are meant to cover.

RISK SELECTION

The preceding portion of this Appendix has concerned itself with ratemaking — the procedures used by companies to prepare rate manuals. Each rate manual contains premiums in dollars for each territory in which a company does business by coverage, limits and deductibles grouped in several different ways including age and use class, driver record, etc. To determine the premium for a specific vehicle and driver it is only necessary to consider each criterion, allocate it to a specific class on the basis of these, and then look up the appropriate rate. It is apparent that any rate as calculated is an average rate and is based on a series of averages for each class and category involved in its calculation. As an average it should cover the total claimed for all the insured purchasing that coverage.

However, since the rate is an average and based on the average of all experience of that class, there will be some variation around that experience on the part of individual drivers. In the case of automobile insurance this variation can be quite large due to limitations in the classification system. It is easy to understand that a class 02 driver that uses his car to drive to and from work is a greater risk to the insurer than a class 01

driver who doesn't drive to work (assuming both have similar driving records) simply because the 01 driver is on the road and exposed to potential accident situations less frequently. But this is just on the average. While it will hold true for most drivers it is not necessarily so in all cases. For example, an 02 driver who has a 0 accident record because he has had at least 1 accident in each of the last few years, is likely a greater risk than an 02 driver, also with a 0 record, who has had only a single accident in the last 10 years. Such an example may be far-fetched and rare, but it is the rare case that is the subject of risk selection. As previously pointed out, the majority of people are accommodated reasonably well within the standard classification system. Using a classification system with relatively few classes, as we now do, results in the necessity of grouping large numbers of individuals together. Included in each of these large groups will be some people who are rightly assigned to the group on the basis of the criteria that are measured but, on the whole because of other criteria that are not measured, tend to be unlike most of the rest of the group. This leads to the obvious conclusion that the present system could be greatly improved by measuring some or all of these other relevant criteria and using them in rating. This is theoretically true, but is difficult to apply on a practical basis. In the ideal case, each person would be looked at as an individual with no attempt to fit him into a group with others. The insurer would then have to evaluate the expected costs to insure him solely on the basis of a subjective assessment of the individual. There could be no objective data on which to base a decision without comparing his experience to that of some other defined group with whom he has certain characteristics in common. Obviously, rating such as this is impossible.

Since an individual must fit into some predefined group, it becomes a question of how narrowly to define the group. The smaller and more closely defined the group, the less the variation within the group. At the same time there will be less experience data available due to the decreased size of the group and the smaller the experience base, the greater the possibility of a chance occurrence distorting the results, i.e. the smaller the group, the less credible the data. Further, the more closely defined the groups, the more complex the system becomes with ancillary cost increases. There must be some practical limit to the number of classes. Consequently, there will always be some portion of each class that, because of other factors, is a higher risk to the insurers than others.

This problem of risk variation within a class would not be as great if one insurer had all the business of the one class. In this case, the premiums earned would be exactly those predicted as necessary to cover that class and the number of insureds would probably be sufficient to cancel out largely the effects of chance occurrences. It is in the case of an individual company, writing a portion of the market in any one class,

that problems can develop since the company's mix within the class may not be the same as the market as a whole. As well, the number of insureds may be such that chance occurrences can have a devastating effect. For this reason, if it were not for some means of having all the companies share the risk for these high risk drivers, it probably would be impossible for these people to get insurance. Any individual company would, by necessity, in order to protect itself, have to be very selective in the risks it wrote.

Each insurer is anxious to improve its results by selecting the better risks in each class. Individual companies have developed a variety of techniques to separate substandard risks from the other risks in a class. Most have prepared underwriting guides or manuals for the use of their agents or sales representatives to try to identify these substandard risks. The following is a sample list drawn from the underwriting guides of several different companies:

- 1) Any person having a record of dangerous driving or known by the agent to drive dangerously.
- 2) Any person having an unsatisfactory driving conviction record.
- 3) Any person having an unsatisfactory accident record.
- 4) Any person who takes strong medication or drugs.
- 5) Any person who makes excessive use of intoxicants.
- 6) Any person working in certain types of occupations or professions, including:
 - (a) barmen
 - (b) distributors of alcoholic beverages
 - (c) gambling
 - (d) illegal or illicit activities
 - (e) professional athletes, musicians and entertainers
 - (f) unmarried youthful members of armed forces
 - (g) race car drivers.
- 7) Any public bus or taxi.
- 8) Any principal driver over 70.
- 9) Any principal driver under 25 where all other available automobile insurance of the applicant (or his family if he resides with them) is not with the company.
- 10) Any person likely to be difficult to deal with.
- 11) Any person who has resided in Canada for a limited period of time or who is not acquainted with usual motor vehicle laws and who may be difficult to defend because of language difficulties.

- 12) Any person with no apparent occupation or means of support.
- 13) Any person with less than 12 months driving experience in Canada or the United States.
- 14) Any person residing in a neighbourhood having a high crime rate or a high proportion of old rundown cars, homes, or business properties.
- 15) Any motorcycle, snowmobile or other recreational type vehicle where all other available automobile insurance of the applicant is not with the company.
- 16) Any sports car, racing car, or high performance car.
- 17) Any person who is an itinerant, transient or who has an indefinite mailing address.
- 18) Any person who is physically or mentally impaired.
- 19) Any vehicle with a fiberglass body.
- 20) Any emotionally unstable person.
- 21) Any older or low value vehicle, unless a certificate of mechanical fitness, policy inspection or Department of Transport check indicates good mechanical condition.
- 22) Any person from whom the agent does not feel that he has obtained adequate information.
- 23) Any person subject to personal or financial criticism.
- 24) Any person who is a poor moral risk.
- 25) Any altered or customized automobile.

Again, it must be repeated that this is not a list prepared by any one company, but is a selection of similar rules from a number of companies.

In spite of the fact that a vehicle or driver may be classified as high-risk (or part of the residual market as it is called) insurance protection should be provided by the industry.

One means by which this market is served is through the Facility. The Facility was started in 1967 to replace its predecessor, the Assigned Risk Plan. Any company in Canada that is a subscriber to the agreement that formed the Facility, and all automobile insurers in Ontario are subscribers, can transfer to the Facility most of the risk on any policy for which it feels the risk is greater than warranted by the premium. The original concept of the Facility was that no individual that was transferred would know this was the case. This was to remove the stigma that came to be attached to the Assigned Risk Plan. Under the Facility system,

the agent or other salesperson takes the application the same as any other and submits it to the company. The company would then, through an analysis of the insured's record, etc. come to a decision as to whether the applicant is a normal or substandard risk and if substandard, whether the risk should be transferred to the Facility. If the risk is to be transferred, 85% of the premium collected on this policy less an allowance for commission and expenses is then paid to the Facility. If a claim arises on this policy the company can claim 85% of the loss from the Facility. At the end of each month the Facility, in turn, allocates all its premiums earned and all its loss costs to all the insurers in the province proportional to the premium each writes in the province. Thus, the largest part, 85% of these substandard risks is shared on a proportional basis by all the companies in the province.

As indicated in the list of sample criteria used to evaluate substandard risks, there are many factors that companies feel can affect the cost of dealing with an insured. Not all of these result in every such applicant being transferred to the Facility. They are merely a guideline for the companies' agents or sales representatives in assessing risks. Even when policies are transferred to the Facility, in most cases, they are written at the normal rates the company uses for that particular class and driving record, i.e. a decision to place a 70 year old driver in the Facility does not affect his rates.

The one exception to the use of normal manual rates by the company is in the case of a poor accident or driving conviction record. In this case, the Facility has a system of surcharges that are added to the normal rates of the company for these drivers. These surcharges are expressed as a percentage of the standard manual premium. If there is more than one surcharge, all of the surcharges are totalled and then applied to the standard manual premium. The surcharges are as follows:

Where a policyholder or principal operator has within a period (immediately preceding the date of the application to the insurer) of thirty-six (36) months:

- a) been responsible for more than one accident:
 - (i) two accidents 25%
 - (ii) each additional accident 15%
- b) been convicted of any offence under any Act governing highway traffic involving:
 - (i) failing to report an accident or to give his name and license number in the event of an accident to police or other persons entitled to such information; improper passing of school buses; driving without due care and

attention; racing; or an offence substantially the same committed outside Canada.

each conviction 50%

- (ii) improper passing of schools or playgrounds; or an offence substantially the same committed outside Canada;

each conviction 25%

- c) been convicted of any offence under an Act governing highway traffic involving:

breach of speed limits; other moving traffic offences related to driver capability or to the mechanical safety of a motor vehicle:

(i) two convictions no charge

(ii) each subsequent conviction 25%

- d) been convicted under the Criminal Code of Canada of any one of the following offences, or under any other Act of an offence substantially the same committed inside or outside Canada:

criminal negligence committed in the operation of a motor vehicle; manslaughter committed in the operation of a motor vehicle; failing to stop at scene of accident; impaired driving; failure or refusal to submit to a breathalyzer test; failing to pass a breathalyzer test; driving while license under suspension; dangerous driving;

each conviction 100%

While the surcharges are cumulative, there is a maximum allowable surcharge established by the Facility in that the application of the surcharges may not result in a total in excess of:

- a) in the case of an unmarried male owner or principal operator under thirty the standard manual premium of the insurer plus a maximum of 100% in additional charges and surcharges;
- b) in the case of other private passenger risks the standard manual premium of the insurer plus a maximum of 200% in additional charges and surcharges.

Policies which require an accident or conviction record surcharge are not automatically transferred by insurers to the Facility. If the premium seems appropriate for the risk many insurers keep the business for their own account rather than use the Facility.

Normally, an insurer can transfer only 85% of a risk to the Facility. However, a policy involving a person who has reached the maximum possible surcharge, either 100% or 200% depending on age is automatically transferred at 100%. In addition, even without a maximum sur-

charge, but in certain circumstances, there is a procedure whereby a company can appeal to the governing committee of the Facility on an individual basis for 100% transfer.

In either case, whether the transfer is on an 85% or 100% basis, the company has to remit to the Facility that portion of the premium, less an allowance for commission and expense. This allowance is set at 25% of the transferred premium.

From analyses of the Facility's operations to date, it might appear that any company would be indifferent to writing substandard risks in that the higher risk can be passed on to the Facility and the risk shared by the industry as a whole. In fact, this is not the case for two reasons. First, normally the company must retain 15% of the exposure for its own account. If the policy as a whole is underpriced and not worth retaining then the 15% will be equally underpriced. Second, the commission and expense allowance at 25% is felt by most companies to be insufficient to cover their costs of writing and servicing Facility business. Generally, this business must be handled separately from the main flow of business and as such, incurs extra costs. Most companies are reluctant to write policies in the substandard market and wherever feasible prefer to retain the risk they write for their own account.

One of the original concepts under which the subscribers to the agreement forming the Facility were to operate was that each would take its fair share of the residual market. This fair share, based on a portion of the residual market proportional to the company's share of the total market, tends to be an upper limit any company wishes of this market. It is in a company's interest to control its share of the expensive high-risk segment of the market. This control can be exercised in a number of ways and is usually enforced at the agent or sales representative level. Most, if not all, companies analyse their accounts by agent and in turn analyse the business they get from each agent by loss ratios and mix of risks. Generally, it is intended that the fair share approach is passed down to the agent level. If an agent appears to be submitting too much high-risk or high-loss ratio business, he can be told that he is to write no new business. In such cases, all he can submit are renewals or additional vehicles on existing policies. As a further incentive to control this, some agents are on a contingent profit basis as well as commission. Thus, it is in the agent's interest to ensure a mix of business consistent with the overall market.

A summary of the Facility's claims experience for the four years ended December 31, 1974 is as follows:

THE FACILITY

LOSS RATIOS* — ALL COVERS

(* Adjusted to include a provision for adjusting costs of 11%)

<u>Reason for Transfer</u>	<u>Year Ended December 31</u>			
	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>
Under age 21 — licensed one year or more	.83	.89	.87	1.14
Morals	1.16	1.13	1.40	1.38
Liquor or drugs	1.24	1.11	1.06	1.30
Sports car	.94	1.03	1.10	1.36
Condition of auto	.88	.82	.79	.97
Licensed less than one year — all ages	.95	1.01	1.09	1.30
Physical impairment	.79	.84	1.06	1.08
Conviction or accident record (note)	.82	.87	.86	.94
Age over 70	.72	.82	.84	.95
Not stated	<u>1.05</u>	<u>.92</u>	<u>1.04</u>	<u>1.03</u>
Total	<u>.90</u>	<u>.93</u>	<u>.96</u>	<u>1.10</u>
For comparison Green Book country-wide experience was	<u>.73</u>	<u>.80</u>	<u>.96</u>	<u>.85</u>

Note: After adding "Facility Surcharge" to premiums.

Totally apart from risk selection is the selection of the areas of the province in which a company will do business. Not all companies write in all territories in the province. While the larger ones tend to do business province-wide, the smaller companies seem to be more selective. If a company does not write in all territories, it is more likely to write its business in the more populous urban centres and surrounding areas. The companies attribute this to the fact that it is easier and less expensive to start business in these areas, growth is quicker and as time goes on they expect to grow outward as they get larger.

APPENDIX F (referred to in Chapter 20)

NEW SECTION FOR THE HIGHWAY TRAFFIC ACT, SUGGESTED BY THE I.I.A.B.O.

Habitual

- Offenders 27A (1) The holder of a licence or permit who within a period of five consecutive years has been convicted, after trial or appeal as the case may be,
- (a) twice or more of offences under sub-sections (1), (2) or (4) of Section 233 of the Criminal Code; or
 - (b) twice or more of offences under Section 234 or 236 of the Criminal Code; or
 - (c) three times or more of offences under Sections 203, 204 or 219 of the Criminal Code in respect of offences committed by or with a motor vehicle or under Sections 238(3) or 295 of the Criminal Code; or
 - (d) three times or more of offences under Section 30 of this Act; or
 - (e) twice or more of offences under Section 117 of this Act; or
 - (f) three times or more of offences under Section 83 of this Act; or
 - (g) five times or more of offences under Section 82(17) of this Act; or
 - (h) five times or more of any or all of the above offences; or
 - (i) who has during five consecutive years on three or more occasions had recorded against him fifteen demerit points under the Regulation provided for under Section 33 of this Act. shall automatically become an “habitual offender”.
- (2) The Registrar shall cancel the licence and permit of any habitual offender and shall see to it that no other licence or permit shall be issued to him for a period of five years and no habitual offender shall within five years of his becoming one, drive or operate a motor vehicle on a highway.
- (3) Sections 28 and 29 shall not apply to habitual offenders, who shall have no right of appeal from imposition of the provisions of sub-section (2).
- (4) Any person who, during 24 consecutive months, is convicted six times or more of violations under the Highway Traffic Act, including cases in which no demerit points have accrued under Ontario regulations 413, shall have his licence suspended by the Registrar for not less than thirty consecutive days.

APPENDIX G¹ (referred to in Chapter 20)

EXAMPLES OF BAD DRIVING RECORDS

Day	Mo.	Yr.	Driver "A"
20	- 04	- 73	Speeding 45 mph. in 30 mph. zone in built-up area
21	- 11	- 73	Impaired driving — C.C.C.
04	- 12	- 73	Above conviction appealed
14	- 05	- 74	Above conviction — appeal withdrawn
06	- 12	- 73	Speeding 43 mph. in 35 mph. zone — prescribed on hwy.
17	- 01	- 74	Speeding 70 mph. in 60 mph. zone — prescribed on hwy.
14	- 05	- 74	Suspended until 23 July '74, ability impaired
23	- 07	- 74	Reinst. — susp. expired or rescinded
20	- 04	- 75	Speeding 45 mph. in 35 mph. zone — prescribed on hwy.
14	- 04	- 75	Speeding 70 mph. in 60 mph. zone — prescribed on hwy.
11	- 06	- 75	Speeding 79 mph. in 50 mph. zone — 50 — not in city, etc.
23	- 06	- 75	Speeding 54 mph. in 35 mph. zone — prescribed on hwy.
19	- 08	- 75	Speeding 55 mph. in 45 mph. zone — prescribed on hwy.

Day	Mo.	Yr.	Driver "B"
09	- 04	- 73	Speeding 40 mph. in 30 mph. zone — 30 — in built-up area
12	- 06	- 73	Speeding 40 mph. in 30 mph. zone — 30 — in built-up area
12	- 12	- 73	Speeding 40 mph. in 30 mph. zone — 30 — in built-up area
02	- 04	- 74	Speeding 54 mph. in 35 mph. zone — prescribed on hwy.
02	- 05	- 74	Speeding 40 mph. in 30 mph. zone — in built-up area
12	- 07	- 74	Speeding 50 mph. in 30 mph. zone — 30 — in built-up area
02	- 08	- 74	Speeding 40 mph. in 30 mph. zone — 30 — in built-up area
05	- 09	- 74	Speeding 60 mph. in 50 mph. zone — 50 — not in city/etc.
09	- 09	- 74	Speeding 45 mph. in 35 mph. zone — prescribed on hwy.
10	- 09	- 74	Speeding 49 mph. in 30 mph. zone — 30 — in built-up area
30	- 09	- 74	Speeding 45 mph. in 35 mph. zone — prescribed on hwy.
17	- 12	- 75	Disobey traffic signal light — amber
25	- 02	- 75	Speeding 40 mph. in 30 mph. zone — 30 — in built-up area
28	- 02	- 75	Speeding 45 mph. in 35 mph. zone — prescribed on hwy.
07	- 03	- 75	Speeding 45 mph. in 35 mph. zone — prescribed on hwy.
18	- 03	- 75	Speeding 35 mph. in 25 mph. zone — prescribed on hwy.
01	- 05	- 75	Speeding 49 mph. in 30 mph. zone — 30 — in built-up area
07	- 06	- 75	Suspended until 09 July 75 Demerit point total
15	- 07	- 75	Speeding 40 mph in 30 mph. zone — 30 — in built-up area
08	- 09	- 75	Speeding 52 mph. in 35 mph. zone — prescribed on hwy.
23	- 10	- 75	Speeding 40 mph. in 30 mph. zone — 30 — in built-up area
15	- 12	- 75	Speeding 35 mph. in 25 mph. zone — prescribed on hwy.

1. Information obtained by the Committee Consultants from the Insurance Bureau of Canada

Driver "C"

Day	Mo.	Yr.	
05	- 06	- 73	Suspended until 03 Aug. 73, ability impaired
13	- 06	- 73	Disobey traffic signal light-red
03	- 08	- 73	Reinst — Susp. expired or rescinded
11	- 01	- 74	Drive while disqualified — C.C.C.
22	- 01	- 74	Above conviction appealed
18	- 10	- 74	Above conviction sustained
15	- 01	- 74	Speeding 45 mph. in 35 mph. zone — prescribed on hwy.
02	- 04	- 74	Speeding 40 mph. in 30 mph. zone — 30 — in built-up area
11	- 07	- 74	Speeding 40 mph. in 30 mph. zone — 30 — in built-up area
16	- 07	- 74	Speeding 39 mph. in 30 mph. zone — 30 — in built-up area
12	- 08	- 74	Speeding 80 mph. in 60 mph. zone — prescribed on hwy.
20	- 08	- 74	Speeding 44 mph. in 30 mph. zone — 30 — in built-up area
30	- 09	- 74	Passing within 100 ft. of pedestrian crossover
18	- 10	- 74	Suspended until 04 April 75, driving while disqualified, C.C.C.
05	- 12	- 75	Speeding 94 mph. in 70 mph. zone — prescribed on hwy.
10	- 12	- 75	Speeding 85 mph. in 70 mph. zone — prescribed on hwy.
18	- 01	- 76	Suspended until 18 Feb. 76, Demerit point total
18	- 02	- 76	Reinst — Susp. expired or rescinded

Driver "D"

Day	Mo.	Yr.	
25	- 03	- 74	Speeding 45 mph. in 30 mph. zone — 30 — in built-up area
26	- 03	- 74	Disobey traffic signal light-red
05	- 04	- 74	Disobey traffic signal light-red
10	- 05	- 74	Speeding 75 mph. in 60 mph. zone — prescribed on hwy.
29	- 05	- 74	Driving with more than 80 mgs. alcohol in blood
29	- 05	- 74	Suspended until 29 Aug. 74, Blood/alcohol content in excess of .08. C.C.C.
14	- 06	- 74	Speeding 90 mph. in 60 mph. zone — prescribed on hwy.
19	- 07	- 74	Suspended until 18 Aug. 74, demerit point total
29	- 08	- 74	Reinst. — Susp. expired or rescinded
22	- 01	- 75	Drive while disqual/proh-under susp, or canc. — C.C.C.
22	- 01	- 75	Suspended until 22 July 75, driving while disqualified, C.C.C.
22	- 01	- 75	Dangerous driving — C.C.C.
22	- 01	- 75	Suspended until 22 July 75, dangerous driving, C.C.C.
22	- 01	- 75	Careless driving
22	- 01	- 75	Drive while disqual — proh — under susp, or canc. — C.C.C.
22	- 01	- 75	Suspended until 22 July 75, driving while disqualified, C.C.C.
19	- 02	- 75	Speeding 46 mph. in 30 mph. zone — 30 — in built-up area
19	- 02	- 75	Fail to report accident
21	- 03	- 75	Suspended until 21 Sept. 75, demerit point total second accum.
21	- 09	- 75	Reinst — Susp. expired or rescinded

Driver "E"

Day Mo. Yr.

10 - 05 - 74 Speeding 40 mph. in 15 mph. zone — prescribed on hwy.
 10 - 05 - 74 Fail to come to full stop at intersection
 17 - 12 - 74 Speeding 50 mph. in 30 mph. zone — 30 — in built-up area
 17 - 12 - 74 Disobey traffic signal light-red
 31 - 12 - 74 Driving with more than 80 mgs. alcohol in blood
 31 - 12 - 74 Suspended until 31 March 75, blood/alcohol content in excess of .08, C.C.C.
 31 - 03 - 75 Reinst. — Susp. expired or rescinded
 22 - 07 - 75 Speeding 65 mph. in 55 mph. zone — prescribed on hwy.
 09 - 01 - 76 Speeding 45 mph. in 30 mph. zone — 30 — in built-up area
 18 - 02 - 76 Suspended re unpaid fine

Driver "F"

Day Mo. Yr.

19 - 09 - 74 Impaired driving — C.C.C.
 19 - 09 - 74 Suspended until 19 Dec. 74, ability impaired
 14 - 11 - 74 Speeding 38 mph. in 25 mph. zone — prescribed on hwy.
 09 - 12 - 74 Impaired driving — C.C.C.
 09 - 12 - 74 Suspended until 09 June 75, ability impaired
 19 - 12 - 74 Reinst. — Susp. expired or rescinded
 09 - 06 - 75 Reinst. — Susp. expired or rescinded
 04 - 09 - 75 Speeding 38 mph. in 30 mph. zone — 30 — in built-up area
 27 - 10 - 75 Careless driving
 27 - 10 - 75 Fail to report damage to highway property

Driver "G"

Day Mo. Yr.

24 - 07 - 74 Speeding 49 mph. in 30 mph. zone — 30 — in built-up area
 09 - 09 - 74 Speeding 40 mph. in 30 mph. zone — 30 — in built-up area
 09 - 09 - 74 Speeding 40 mph. in 30 mph. zone — 30 — in built-up area
 24 - 09 - 74 Speeding 49 mph. in 30 mph. zone — 30 — in built-up area
 10 - 10 - 74 Speeding 90 mph. in 60 mph. zone — prescribed on hwy.
 21 - 10 - 74 Speeding 53 mph. in 35 mph. zone — prescribed on hwy.
 24 - 10 - 74 Speeding 40 mph. in 30 mph. zone — 30 — in built-up area
 24 - 11 - 74 Suspended until 16 Jan. 75, demerit point total
 09 - 12 - 74 Speeding 50 mph. in 35 mph. zone — prescribed on hwy.
 16 - 01 - 75 Reinst. — Susp. expired or rescinded
 03 - 04 - 75 Speeding 68 mph. in 50 mph. zone — 50 — not in city/etc.
 30 - 04 - 75 Speeding 95 mph. in 70 mph. zone — prescribed on hwy.
 24 - 09 - 75 Speeding 80 mph. in 70 mph. zone — prescribed on hwy.
 14 - 01 - 76 Speeding 50 mph. in 40 mph. zone — prescribed on hwy.
 16 - 06 - 76 Failure/improper use seat belt assembly — driver

Driver "H"

Day Mo. Yr.

04	-	01	-	73	Speeding 42 mph. in 30 mph. zone — 30 — in built-up area
15	-	01	-	73	Speeding 44 mph. in 30 mph. zone — 30 — in built-up area
16	-	02	-	73	Speeding 39 mph. in 30 mph. zone — 30 — in built-up area
21	-	02	-	73	Speeding 40 mph. in 30 mph. zone — 30 — in built-up area
28	-	02	-	73	Drive improper on multi-lane highway
02	-	04	-	73	Prohibited turn
03	-	05	-	73	Suspended until 04 June 73, demerit point total
11	-	05	-	73	Improper drive on divided hwy. — lane change
23	-	05	-	73	Speeding 80 mph. in 70 mph. zone — prescribed on hwy.
04	-	06	-	73	Reinst. — Susp. expired or rescinded
03	-	07	-	73	Speeding 45 mph. in 35 mph. zone — prescribed on hwy.
31	-	07	-	73	Speeding 35 mph. in 25 mph. zone — prescribed on hwy.
12	-	12	-	73	Speeding 55 mph. in 45 mph. zone — prescribed on hwy.
13	-	12	-	73	Speeding 50 mph. in 40 mph. zone — prescribed on hwy.
25	-	03	-	74	Drive while disqualified — C.C.C.
25	-	03	-	74	Suspended until 25 Sept. 74, driving while disqualified, C.C.C.
18	-	04	-	74	Racing
20	-	10	-	74	Reinstated
20	-	02	-	75	Speeding 40 mph. in 30 mph. zone — 30 — in built-up area
06	-	03	-	75	More than one licence

Driver "I"

Day Mo. Yr.

16	-	04	-	73	Fail to come to full stop at intersection
18	-	05	-	73	Bylaw — prohibited turn
06	-	06	-	73	Speeding 48 mph. in 30 mph. zone — 30 — in built-up area
08	-	07	-	73	Suspended until 08 Aug. 73, demerit point total
08	-	06	-	73	Reinst. — Susp. expired or rescinded
21	-	02	-	74	Impaired driving — C.C.C.
25	-	02	-	74	Above conviction appealed
07	-	06	-	74	Above conviction sustained
21	-	02	-	74	Failure to provide breath sample (or refusal)
25	-	02	-	74	Above conviction appealed
07	-	06	-	74	Above conviction sustained
07	-	06	-	74	Suspended until 25 July 74, ability impaired
07	-	06	-	74	Suspended until 25 July 74, failure to provide breath sample, C.C.C.
25	-	07	-	74	Reinst. — Susp. expired or rescinded
21	-	04	-	75	Speeding 80 mph. in 70 mph. zone — prescribed on hwy.

Driver "J"

Day Mo. Yr.

10	-	10	-	72	Speeding 40 mph. in 30 mph. zone — 30 — in built-up area
11	-	09	-	73	Speeding 45 mph. in 30 mph. zone — 30 — in built-up area
29	-	11	-	73	Disobey traffic signal light-red
27	-	12	-	73	Disobey traffic signal light-red
24	-	01	-	74	Speeding 55 mph. in 45 mph. zone — prescribed on hwy.
01	-	03	-	74	Fail to come to full stop in intersection
04	-	06	-	74	Speeding 80 mph. in 60 mph. zone — prescribed on hwy.
20	-	06	-	74	Speeding 90 mph. in 60 mph. zone — prescribed on hwy.
04	-	07	-	74	Suspended until 03 Aug. 74, Demerit point total
11	-	07	-	74	Speeding 69 mph. in 50 mph. zone — 50 — not in city/etc.
03	-	08	-	74	Reinst. — Susp. expired or rescinded
07	-	11	-	74	Speeding 45 mph. in 30 mph. zone — 30 — in built-up area

Driver "K"

Day Mo. Yr.

25	-	09	-	73	Bylaw — prohibited turn
11	-	10	-	73	Speeding 60 mph. in 45 mph. zone — prescribed on hwy.
04	-	12	-	73	Speeding 40 mph. in 30 mph. zone — 30 — in built-up area
13	-	03	-	74	Prohibited turn
04	-	06	-	74	Speeding 40 mph. in 30 mph. zone — 30 — in built-up area
24	-	07	-	74	Speeding 35 mph. in 25 mph. zone — prescribed on hwy.
19	-	08	-	74	Speeding 34 mph. in 25 mph. zone — prescribed on hwy.
13	-	12	-	74	Fail to yield right of way
10	-	01	-	75	Pedestrian crossover violation-same side of road
02	-	04	-	75	Improper left turn — intersec. of two-way highways
10	-	04	-	75	Speeding 45 mph. in 30 mph. zone — 30 — in built-up area
16	-	05	-	75	Suspended until 10 July 75, demerit point total
27	-	05	-	75	Speeding 38 mph. in 30 mph. zone — 30 — in built-up area
20	-	11	-	75	Speeding 42 mph. in 25 mph. zone — prescribed on hwy.
16	-	12	-	75	Speeding 45 mph. in 30 mph. zone — 30 — in built-up area
07	-	01	-	76	Drive while disqualified — C.C.C.
07	-	01	-	76	Suspended until 07 July 76, driving while disqualified, C.C.C.
12	-	07	-	76	Reinstated

Driver "L"

Day Mo. Yr.

07	-	05	-	73	Speeding 40 mph. in 30 mph. zone — 30 — in built-up area
05	-	03	-	74	Speeding 70 mph. in 60 mph. zone — prescribed on hwy.
21	-	08	-	74	Restricted licence violation
28	-	10	-	74	Speeding 34 mph. in 25 mph. zone — prescribed on hwy.
03	-	12	-	74	Prohibited turn
07	-	03	-	75	Fail to remain at accident — C.C.C.
07	-	03	-	75	Above conviction appealed
25	-	03	-	75	Above conviction sustained
07	-	03	-	75	Impaired driving — C.C.C.
07	-	03	-	75	Above conviction appealed
25	-	03	-	75	Above conviction sustained
07	-	07	-	75	Failure or refusal to provide breath sample
07	-	03	-	75	Above conviction appealed
25	-	03	-	75	Above conviction sustained
18	-	03	-	75	Impaired driving — C.C.C.
18	-	03	-	75	Suspended until 18 Sept, 75, ability impaired
18	-	03	-	75	Speeding 34 mph. in 25 mph. zone — prescribed on hwy.
25	-	03	-	75	Suspended until 25 Sept. 75, ability impaired
25	-	03	-	75	Suspended until 25 Sept. 75, fail to remain at accident, C.C.C.
25	-	03	-	75	Suspended until 25 Sept. 75, failure to provide breath sample, C.C.C.
02	-	06	-	75	Speeding 34 mph. in 25 mph. zone — prescribed on hwy.
25	-	09	-	75	Reinst. — Susp. expired or rescinded
11	-	12	-	75	Impaired driving — C.C.C.
11	-	12	-	75	Suspended until 11 June 76, ability impaired
11	-	12	-	75	Failure to or refusal to provide breath sample

APPENDIX H

(referred to in Chapter 20)

DEMERIT POINT SYSTEM OFFENCES

<u>Number of Points</u>	<u>Conviction</u>
7	Failing to remain at scene of an accident (Highway Traffic Act).
6	Careless driving. Racing. Exceeding speed limit by 30 m.p.h. or more.
5	Driver of bus failing to stop at unprotected railway crossings.
4	Exceeding the speed limit by 20 to 29 m.p.h. Failing to stop for school bus. Following too closely.
3	Exceeding speed limit by 11 to 19 m.p.h. Driving through, around or under railway crossing barrier. Failing to yield right of way. Failing to obey a stop sign, signal light or railway crossing signal. Failing to obey directions of police officer. Improper passing. Crowding driver's seat. Wrong way on one-way street or highway.
2	Failing to lower headlamp beam. Improper opening of vehicle door. Prohibited turns. Towing of persons on toboggans, bicycles, skis, etc. prohibited. Failing to obey signs other than those mentioned above. Pedestrian cross-over. Failing to share road. Improper right turn. Failing to signal. Unnecessarily slow driving.

Source: *The Driver's Handbook*, Ministry of Transportation and Communications, March 1976.

APPENDIX I

(referred to in Chapter 25)

October 19, 1976

Mr. Vernon M. Singer, Q.C., M.P.P.
Chairman
The Select Committee on Company Law
of the Legislative Assembly of Ontario
Queen's Park
Toronto, Ontario

Dear Mr. Singer

The purpose of this letter is to record the findings, conclusions and recommendations related to the feasibility study which I recently conducted on behalf of the Committee. The question I examined is: If motor vehicle insurance is made compulsory, will it be feasible to use a computer system to aid in enforcing the law? That is, can a computer system be used successfully to keep track of people who are driving uninsured vehicles?

To gather information for my investigation, I interviewed the following people, either in person or by telephone.

1. Mr. Marshall B. Dawson, Coordinator of Insurance, Ontario Ministry of Consumer and Commercial Relations.
2. Mr. Robert H. Humphries, Assistant Deputy Minister, Drivers and Vehicles, Ontario Ministry of Transportation and Communications.
3. Mr. Herbert J. Aiken, Executive Director, Transportation Regulation Division, Ontario Ministry of Transportation and Communications.
4. Mr. Ernest H. Miles, Director, The Motor Vehicle Accident Claims Fund, Ontario Ministry of Consumer and Commercial Relations.
5. Mr. Hugh N. Gilchrist, former Director of The Motor Vehicle Accident Claims Fund for Ontario.
6. Mr. John R. A. MacKenzie, Regional Vice-President, State Farm Mutual Automobile Insurance Company, Scarborough, Ontario.
7. Mr. Clayton P. Sturgeon, Assistant Vice-President — Industry Methods, State Farm Mutual Automobile Insurance Company, Bloomington, Illinois.

In addition to the above interviews, Mr. Aiken telephoned an official in the State of Maryland to ask about the current practices used in Maryland to enforce their compulsory insurance legislation.

FINDINGS

Related to Ontario

1. During the past year, about 125,000 motor vehicles were uninsured out of a total of 3,500,000. That is, less than 4% of the total were uninsured.
2. The Motor Vehicle Accident Claims Fund collected \$5,790,000 last year.
3. Each year, about 2,500,000 motor vehicle registrations are transferred.
4. About 140 different companies write insurance policies for motor vehicles.
5. The systems for motor vehicle registration and driver licence administration are automated. The computer processing work is done in the Computer Centre at Downsview. The current annual operating cost of these two computer systems is \$3,660,000.

Related to the State of Maryland

1. Maryland has about 2,500,000 vehicles.
2. The vehicle permit is renewed annually and the insurance information is recorded on the back of the permit.
3. Maryland is aggressive in trying to enforce the compulsory insurance law.
4. The entire process is manual, and matching insurance information with registration information presents few problems.
5. The State of Maryland has been reluctant to automate this process because updating the file during the renewal period would be difficult since all the work would need to be done in a short time. In addition, to match vehicles, insurance policies and individuals using a computer system requires unique identifiers for vehicles, insurance policies and individuals.
6. It costs Maryland \$1,500,000 a year to run the Financial Responsibility Division. This does not include the cost of the investigative unit.

7. The State of Maryland receives about 400,000 notices per year from the insurance companies telling them that a policy has been cancelled or has lapsed because of non-payment. The government then notifies the insured person that he has 10 days in which to reinstate his insurance. In 80% of the cases there is no problem because the insurance policy has merely been transferred from one company to another. For the remaining 20%, a suspension order is issued, but half of these cases are corrected in a short time. 10% of the total number of cases are turned over to the investigative unit, which is asked to pick up the licences. It takes months to track down some of these people.

Related to Other U.S. Jurisdictions

1. At present, in the United States, about 25 states have compulsory insurance laws which include no-fault provisions. None of these states has tried to automate the related administrative systems.
2. In North Carolina, the Motor Vehicle Department made a diligent effort for many years to keep track of automobile owners to ensure compliance with the compulsory insurance law. The amount of paperwork proved to be very large and resulted in a substantial backlog of work.
3. The Insurance Industry Committee on Motor Vehicle Administration (IICMVA) has developed some recommended guidelines on this issue. The committee believes that no system of enforcement can achieve total compliance at all times. Past attempts to ensure total compliance have proven to be futile.
4. IICMVA also believes that if a system attempts to track down the uninsured minority by keeping track of the insured majority, then one will reach a law of diminishing returns. A side effect is that the insured public becomes unnecessarily harassed.
5. IICMVA recommends that self-certification should be established as a minimum requirement. That is, each person who is registering a motor vehicle would sign a statement of the form: "I certify that I have the necessary insurance to comply with the Ontario Law etc." IICMVA also recommends that about 10% of all policies should be verified on a random basis.
6. The States of Pennsylvania, New Jersey, Virginia, Florida, and Georgia are currently using the approach recommended by IICMVA. These States also ask the insurance companies to notify the government only when a policy is cancelled within six months after it is issued.

DISCUSSION OF FINDINGS

The following are problems related to the use of a computer to track all insurance policies:

1. Many insurance companies are not mechanized.
2. The insurance companies would need to notify the government each time there is a change of vehicle registration. This would involve a lot of paperwork and would delay the transmission of information to the government.
3. Most insurance companies depend on their agents for a lot of their paperwork. This also causes delays in the transmission of information.
4. As a result of the above three factors, many insurance companies would be slow in updating the records for the government.
5. To use a computer to track all insurance policies, one would need to develop unique identifiers for vehicles, insurance policies and individuals. It is feasible to develop these identifiers, but the time delays described above would make it impossible to keep the computer files current and accurate.

OTHER SUGGESTED APPROACHES

Some people I spoke to suggested that one possible aid to the tracking problem would be the introduction of "non-cancellable" insurance. That is, each person would pay cash for his insurance policy and loans would be arranged for people who need them. But other people I spoke to argued that this would be unfair for the majority of citizens who pay for their insurance promptly.

Some people suggested that the insurance should be associated with an individual so that each person who has a driver's licence would contribute to the liability insurance fund. However, other people argued that this would create a duplication of effort because motor vehicle collision insurance would still need to be arranged.

CONCLUSIONS

It could be argued that an attempt to track the majority of vehicles to catch the minority of offenders would be expensive and inefficient. But the issue of cost cannot rule out this approach. If the government is determined to try to enforce the law as completely as possible, then even if the present costs were doubled or tripled, it might still be worth doing.

The real question is not one of economic feasibility, but rather one of operational feasibility. That is, will the system work? Can a computer

system be used successfully to keep track of people who are driving uninsured vehicles? In my opinion, the answer is no, for the following reasons:

1. Communication between 140 insurance companies plus their agents and the government would be a major problem and would create significant delays in the collection of information by the government.
2. An individual could cancel one insurance policy and buy another, so that during the transfer period the computer file would be incorrect. This problem could be alleviated if a “non-cancellable” policy is introduced.
3. At present, most passenger cars have their licences renewed during a few weeks at the end of the year. This would create a heavy workload in updating the computer files. The heavy workload would make it difficult to keep the computer files current.

RECOMMENDATION

I conclude that it is not operationally feasible to have computer files that contain current and accurate information about vehicle registrations, insurance policies and individuals. I, therefore, strongly recommend against any attempt to try to track all of the insurance policies through the use of a computer system.

I look forward to meeting with the Committee and will be prepared to answer questions during the meeting.

Yours sincerely

“HARVEY S. GELLMAN”

Harvey S. Gellman
President

APPENDIX J

(referred to in Chapter 27)

The following is an extract from the text of Report No. submitted by Woods Gordon and Company to the Select Committee on Company Law, dated March 1977:

GENERAL INFORMATION ON ORGANIZATIONS OPERATING IN THE AUTOMOBILE INSURANCE BUSINESS IN ONTARIO AS AT DECEMBER 31, 1975

The sources of the information used in this appendix are as follows:

- 1) *Company Name*
— schedule XI of the 1975 report of the Superintendent of Insurance of Ontario which is a listing of all the organizations writing automobile insurance in Ontario and the premiums they write.
- 2) *Enabling Legislation*
— the report of the Superintendent of Insurance of Ontario for Ontario companies and the report of the Federal Superintendent of Insurance for the Canadian, British and Foreign companies.
- 3) *Affiliation by Group*
— the annual statistical issue of “Canadian Insurance”. (While other affiliations may exist, only those shown by Canadian Insurance have been used.)
- 4) *Year Licensed*
— the individual financial statements of organizations contained in both the Provincial and Federal Superintendents’ Reports.
- 5) *Ownership*
— an analysis by the Ontario Department of Insurance.
- 6) *Automobile Premiums Written*
— schedule XI of the Ontario Superintendent of Insurance’s Annual Report.

GENERAL INFORMATION ON ORGANIZATIONS OPERATING
IN THE AUTOMOBILE INSURANCE BUSINESS IN
ONTARIO AS AT DECEMBER 31, 1975

Company	Enabling legislation	Affiliation by group	Year licensed	Ownership	Automobile premiums written in Ontario — 1975 by ownership	
					Canadian	Foreign
Abstainers Insurance Company	Ontario		1956	Canadian	\$ 4,173,409	
Aetna Casualty & Surety Company	Foreign		1921	Foreign		\$ 4,761,258
Aetna Insurance Company	Foreign		1868	Foreign		1,017,072
Affiliated FM Insurance Company	Foreign		1954	Foreign		31,445
The Albion Insurance Company of Canada	Canadian	Dale & Company Group	1957	Foreign		1,758,613
Allstate Insurance Company	Foreign		1949	Foreign		177,561
Allstate Insurance Company of Canada	Canadian		1962	Foreign		33,208,376
Alpina Insurance Company Limited	Foreign		1949	Foreign		860,303
American Bankers Insurance Company of Florida	Foreign		1968	Foreign		833,704
American Home Assurance Company	Foreign		1966	Foreign		240,002
The American Insurance Company	Foreign	Shaw & Begg Group	1912	Foreign		5,301,081
American Mutual Liability Insurance Company	Foreign		1947	Foreign		132,442
American National Fire Insurance Company	Foreign	Great American Insurance Cos.	1953	Foreign		
American Reinsurance Company	Foreign		1968	Foreign		48,678
American Road Insurance Company	Foreign		1963	Foreign		259,190
Anglo Canada General Insurance Company	Ontario	Anglo-Gibraltar Group	1949	Foreign		866,609
Argonaut Insurance Company	Foreign		1971	Foreign		
Bankers & Traders Insurance Company Limited	British	United Insurance Managers Ltd.				
Bay City General Insurance Company	Ontario	Simcoe-Bay Group	1924	Foreign		154,472
British America Assurance Company	Canadian	Royal Insurance	1963	Canadian	780,077	
Calvert Fire Insurance Company	Foreign		1868	Foreign		6,767,420
The Canada Accident & Fire Assurance Company			1948	Foreign		1,422
	Canadian	Commercial Union Assurance Group				
		Norwich Union Insurance Group	1888	Foreign		3,294,592
Canada Security Assurance Company	Canadian		1920	Foreign		588,817

**Automobile
premiums written in
Ontario — 1975 by ownership**

Company	Enabling legislation	Affiliation by group	Year licensed	Ownership	Canadian	Foreign
Canadian General Insurance Company	Canadian	Canadian-General Group	1908	Canadian	12,275,888	
Canadian Home Assurance Company	Canadian	Canadian Home Group	1950	Canadian	6,539	
The Canadian Indemnity Company (Canadian Mercantile) La Compagnie D'Assurance Canadienne Mercantile	Canadian		1919	Canadian	6,812,585	
Canadian Pioneer Insurance Company	Canadian	Commerce Group	1937	Canadian	(196)	78
The Canadian Provincial Insurance Company	Canadian	General Accident Group	1961	Foreign		
	Canadian	Independent Insurance Managers Group	1957	Foreign		790,370
The Canadian Surety Company	Canadian	Canadian Surety Group	1913	Foreign		3,822,479
Canadian Universal Insurance Company Limited	Canadian		1944	Foreign		1,692,197
The Casualty Company of Canada	Canadian	Dominion of Canada Group	1915	Canadian	6,634,091	
Centennial Insurance Company	Foreign	Fire of Canada-Centennial Group				
			1952	Foreign		2,257
Central Mutual Insurance Company	Foreign		1923	Foreign		2,684,589
The Century Insurance Company of Canada	Canadian		1908	Foreign		2,610,942
Chrysler Insurance Company	Foreign		1967	Foreign		241,859
CNA Assurance Company (Commerce General) La Compagnie D'Assurance Generale de Commerce	Canadian		1946	Foreign		3,595,131
Commercial Union Assurance Company Limited	Canadian British	Commerce Group Commercial Union Assurance Group	1928	Canadian	4,365	
			1868	Foreign		21,796,848
Commonwealth Insurance Company	Canadian		1949	Canadian	(445)	
Commercial Union Assurance Company of Canada Consolidated Fire and Casualty Insurance Company	Canadian			Foreign		8,917,608
Constitution Insurance Company of Canada	Canadian	Shaw & Begg Group	1931	Foreign		135,200
The Continental Insurance Company	Canadian Foreign	Continental Insurance Companies	1962	Foreign		9,837,749
			1910	Foreign		1,741,184
Cooperative Fire and Casualty Company	Canadian		1952	Canadian	4,111	
Cooperators Insurance Association	Ontario		1951	Canadian	70,812,057	
Coronation Insurance Company Limited	Ontario		1954	Foreign		2,725
Cornhill Insurance Company, Limited	British	Independent Insurance Managers Group	1922	Foreign		1,668,183

Automobile
premiums written in
Ontario — 1975 by ownership

Company	Enabling legislation	Affiliation by group	Year licensed	Ownership	Canadian	Foreign
Cumis Insurance Society, Incorporated	Foreign		1966	Foreign		845
The Dominion of Canada General Insurance Company	Canadian	Dominion of Canada Group	1887	Canadian	26,147,077	
The Dominion Insurance Corporation	Canadian	Continental Insurance Companies	1907	Foreign		10,837,089
Eagle Star Insurance Company of Canada	Foreign	Eagle Star Group	1912	Foreign		(733)
Eagle Star Insurance Company Limited	Canadian	Eagle Star Group	1907	Canadian	2,376,600	(2,237)
Eaton Insurance Company	Canadian		1936	Canadian	23,697,853	
Economical Mutual Insurance Company	Canadian		1954	Canadian	56,893	
Elite Insurance Company	Foreign		1954	Foreign		364,626
Emmco Insurance Company	Foreign	Employers Insurance of WAUSAU	1966	Foreign		306,156
Employers' Mutual Fire Insurance Company						
Employers' Mutual Liability Insurance Company of Wisconsin	Foreign	Employers Insurance of WAUSAU	1951	Foreign		1,811,997
Employers' Reinsurance Corporation	Foreign		1927	Foreign		348
English & American Insurance Company Limited	British		1947	Foreign		
L'Equitable, Compagnie d'Assurances Generales	Canadian		1971	Canadian		
Excess Insurance Company Limited	British		1935	Foreign		
Federal Fire Insurance Company of Canada	Canadian	Shaw & Begg Group	1937	Foreign		5,070,392
Federal Insurance Company	Foreign	Chubb & Son Group	1929	Foreign		9,995,784
Federated Mutual Insurance Company	Foreign		1920	Foreign		3,272,815
Federation Insurance Company of Canada	Canadian	Federation Insurance Group	1948	Foreign		1,475,618
Fidelity Insurance Company of Canada	Canadian	U.S. Fidelity Group	1922	Foreign		2,190,541
The Fire Insurance Company of Canada	Canadian	Fire of Canada-Centennial Group				
Fireman's Fund Insurance Company	Foreign		1918	Foreign		106,705
First National Insurance Company of America	Foreign	Shaw & Begg Group	1930	Foreign		8,962,943
Foremost Insurance Company Grand Rapids, Michigan	Foreign	Safeco Insurance Companies	1961	Foreign		1,260,411
	Foreign		1969	Foreign		

**Automobile
premiums written in
Ontario — 1975 by ownership**

Company	Enabling legislation	Affiliation by group	Year licensed	Ownership	Canadian	Foreign
The General Accident Assurance Company of Canada	Canadian	General Accident Group	1906	Foreign		23,724,314
General Accident Fire and Life Assurance Corporation Limited	British Foreign	General Accident Group	1908	Foreign		
General Insurance Company of America		Safeco Insurance Companies	1926	Foreign		251,976
The General Security Insurance Company of Canada	Canadian		1942	Canadian	1,867,972	
Gerling Global General Insurance Company	Ontario	Gerling Global Group	1956	Foreign		2,476,338
Gibraltar General Insurance Company	Ontario	Anglo-Gibraltar Group	1958	Foreign		4,054,987
The Globe Indemnity Company of Canada	Canadian	Royal Insurance	No date	Foreign		1,782,221
Gore Mutual Insurance Company	Canadian		1937	Canadian		
Great American Insurance Company	Foreign	Great American Insurance Cos.	1904	Foreign	16,092,428	
The Great Eastern Insurance Company	Canadian	Monitor Underwriting Management Ltd.	1953	Foreign		8,160,392
			1872	Foreign		2,995,754
The Guarantee Company of North America	Canadian		1911	Foreign		4,713,069
Guardian Insurance Company of Canada	Canadian		1919	Foreign		17,826,347
The Halifax Insurance Company	Canadian		1919	Foreign		7,369,377
The Hartford Fire Insurance Company	Foreign	Hartford Group	1836	Foreign		10,506,890
The Home Insurance Company	Foreign		1902	Foreign		10,297,427
The Hudson Bay Insurance Company	Canadian	Royal Insurance	1910	Foreign		1,445,863
Ideal Mutual Insurance Company	Foreign		1970	Foreign		27,243
The Imperial Guarantee and Accident Insurance Company of Canada	Canadian	Royal Insurance	1928	Foreign		693,616
Insurance Company of North America	Foreign		1889	Foreign		4,243,738
The Insurance Corporation of Ireland Limited	Foreign		1951	Foreign		868,422
Law Union & Rock Insurance Company	British	Royal Insurance	1899	Foreign		
Liberty Mutual Fire Insurance Company	Foreign	Liberty Mutual Group	1925	Foreign		12,561,166
Liberty Mutual Insurance Company	Foreign	Liberty Mutual Group	1936	Foreign		198,392
The Liverpool and London and Globe Insurance Company Limited	British	Royal Insurance	1868	Foreign		940,600

Automobile
premiums written in
Ontario — 1975 by ownership

Company	Enabling legislation	Affiliation by group	Year licensed	Ownership	Canadian	Foreign
Lloyds	Special agreement with provinces			Foreign		10,769,169
London & Edinburgh General Insurance Company Limited	British	Monitor Underwriting Management Ltd.	1968	Foreign		1,464,960
The London & Lancashire Insurance Company, Limited	British	Royal Insurance	1880	Foreign		1,969,696
London and Midland General Insurance Company	Canadian		1948	Foreign		44,843
The London Assurance	British	Sun Alliance & London Group	1869	Foreign		(628)
Lumberman's Mutual Casualty Company	Foreign		1920	Foreign		14,811,046
Markel Insurance Company of Canada	Canadian		1972	Foreign		5,897,691
Maryland Casualty Company	Foreign		1903	Foreign		1,515,893
Middlesex Insurance Company	Foreign		1968	Foreign		223,937
Midland Insurance Company	Foreign		1970	Foreign		(719)
The Missisquoi & Rouville Insurance Company	Canadian		1951	Canadian	3,092,755	
Motors Insurance Corporation	Foreign		1956	Foreign		2,539,220
National Employers Mutual General Insurance Association, Limited	British		1949	Foreign		2,860
New Hampshire Insurance Company	Foreign		1918	Foreign		(32,825)
The New India Assurance Company, Limited	British	Dale & Company Group	1953	Foreign		(3)
Niagara Fire Insurance Company	Foreign	Continental Insurance Companies	1912	Foreign		
North American Company for Property and Casualty Insurance	Foreign		1945	Foreign		40,552
North British and Mercantile Insurance Company Limited	British	Commercial Union Assurance Group	1868 1960	Foreign Canadian	39,825	1,796,680
Northumberland General Insurance Company	Canadian		1868	Foreign		
The Northern Assurance Company Limited	British	Commercial Union Assurance Group	1868	Foreign		2,985,053

Automobile
premiums written in
Ontario—1975 by ownership

Company	Enabling legislation	Affiliation by group	Year licensed	Ownership	Canadian	Foreign
Norwich Union Fire Insurance Society Limited	British	Norwich Union Insurance Group	1880	Foreign		5,128,251
The Ocean Accident & Guarantee Corporation, Limited	British	Commercial Union Assurance Group	1895	Foreign		
Old Republic Insurance Company	Foreign		1956	Foreign		18,555
Olympic Insurance Company	Foreign		1959	Foreign		
Ontario Motorist Insurance Company	Ontario	Canadian Surety Group	1974	Canadian	2,689,898	
The Orion Insurance Company Limited	British	Dale & Company Group	1949	Foreign		
Pacific Employers Insurance Company	Foreign		1969	Foreign		274,007
Pafco Insurance Company Limited	Ontario		1970	Canadian	4,605,959	
La Paix Compagnie d'Assurances Generales du Canada	Canadian	Le Groupe Laurentienne	1956	Foreign		130,456
Pearl Assurance Company, Limited	British		1927	Foreign		357,195
The Personal Insurance Company of Canada	Canadian		1974	Canadian	619,586	
Perth Insurance Company	Canadian		1983	Canadian	2,632,749	
Phoenix Assurance Company of Canada	Canadian		1905	Foreign		7,501,927
Pilot Insurance Company	Ontario		1927	Foreign		23,884,605
Pitts Insurance Company	Canadian		1971	Canadian	3,108,245	
The Portage La Prairie Mutual Insurance Company	Canadian		1930	Canadian	1,386,877	
Premier Insurance Company	Ontario		1947	Canadian		
Provident Assurance Company	Ontario		1952	Canadian	31,241	
Provincial Insurance Company Limited	British	Independent Insurance Managers Group	1910	Foreign		845,270
Prudential Assurance Company Limited (of England)	British		1923	Foreign		9,030,812
Quebec Assurance Company	Canadian		1869	Foreign		10,308
Queensland Insurance Company, Limited	British		1918	Foreign		
Reliance Insurance Company (of Philadelphia)	Foreign		1918	Foreign		5,390,276
Resolute Insurance Company	Foreign		1928	Foreign		(15,214)

Automobile
premiums written in
Ontario — 1975 by ownership

Company	Enabling legislation	Affiliation by group	Year licensed	Ownership	Canadian	Foreign
Royal General Insurance Company of Canada	Canadian	Continental Insurance Companies	1964	Foreign		10,592
Royal Insurance Company, Limited	British	Royal Insurance	1868	Foreign		42,087,160
Safeco Insurance Company of America	Foreign	Safeco Insurance Companies	1958	Foreign		5,294,271
St. Paul Fire & Marine Insurance Company	Foreign	St. Paul Insurance Companies	1907	Foreign		710,885
Scottish & York Insurance Company Limited	Ontario		1961	Foreign		9,330,362
Scottish Canadian Assurance Corporation	Canadian	General Accident Group	1920	Foreign		18
The Scottish Union & National Insurance Company						
Security Mutual Casualty Company	British	Norwich Union Insurance Group	1882	Foreign		762,815
Sentry Insurance A Mutual Company	Foreign		1955	Foreign		1,138,498
Simcoe & Erie General Insurance Company	Foreign		1945	Foreign		10,868
The Sovereign General Insurance Company	Ontario	Simcoe-Bay Group	1959	Canadian	2,651,774	
The Stanstead and Sherbrooke Insurance Company	Canadian	Commercial Union Assurance Group	1953	Canadian	3,256,010	
State Farm Mutual Automobile Insurance Company						
State Farm Mutual Insurance Company	Foreign	State Farm Insurance Companies	1940	Foreign		1,231,837
Sun Alliance Insurance Company						
Sun Insurance Office Limited	Canadian	Sun Alliance & London Group	1938	Foreign		40,690,522
Switzerland General Insurance Company Limited	British	Sun Alliance & London Group	1956	Foreign		9,092,563
The Tokio Marine and Fire Insurance Company, Limited	Foreign	Federation Insurance Group	1892	Foreign	(15,822)	
			1935	Foreign	281,584	
Toronto General Insurance Company	Foreign					
Traders General Insurance Company	Canadian	Canadian General Group	1960	Foreign		11,171
Transport Indemnity Company	Canadian	Canadian General Group	1937	Canadian	643,490	
Transport Insurance Company	Foreign		1951	Canadian	398,885	
Transportation Fire & Casualty Company	Foreign		1957	Foreign		343,495
The Travelers Indemnity Company	Ontario		1964	Foreign		843,660
Travelers Indemnity Company of Canada	Foreign	Travelers Insurance Companies	1949	Canadian	569,820	
Truck Insurance Exchange	Canadian	Travelers Insurance Companies	1912	Foreign		664,751
Unigard Mutual Insurance Company	Foreign	Travelers Insurance Companies	1921	Foreign		19,522,268
	Foreign			Foreign		48,415
			1918	Foreign		108,782

Automobile
premiums written in
Ontario — 1975 by ownership

Company	Enabling legislation	Affiliation by group	Year licensed	Ownership	Canadian	Foreign
Unionameric Insurance Company	Foreign			Foreign		17,671
United Canada Insurance Company	Canadian		1960	Foreign		1,251,369
United Provinces Insurance Company	Ontario	The United Provinces Group	1955	Canadian	1,117,237	
United States Fidelity and Guaranty Company	Foreign	U.S. Fidelity Group	1903	Foreign		5,200,194
United States Fire Insurance Company	Foreign	Crum & Forster of Canada Ltd.	1919	Foreign		285,418
The Unity Fire and General Insurance Company	Foreign	Independent Insurance Managers Group	1946	Foreign		585,056
Utica Mutual Insurance Company	Foreign		1968	Foreign		20,336
Victoria Insurance Company of Canada	Canadian		1956	Canadian	488,468	
The Waterloo Mutual Insurance Company	Canadian		1960	Canadian	5,770,491	
The Wawanesa Mutual Insurance Company	Canadian		1930	Canadian	12,173,521	
Wellington Fire Insurance Company	Canadian	Shaw & Begg Group	1937	Foreign		16,344,609
The Western Assurance Company	Canadian	Royal Insurance	1868	Foreign		30,767,443
York Fire & Casualty Company	Ontario		1955	Canadian	691,863	
The Yorkshire Insurance Company Limited	British	General Accident Group	1907	Foreign		
Zurich Insurance Company	Foreign		1923	Foreign		33,703,376
					\$217,709,998	\$597,561,928

REINSURERS

L'Abelle I.G.A.R.D.	Foreign	Universal Reinsurance Group		Foreign	
Canadian Reinsurance Company	Canadian	Canadian Reinsurance Group	1953	Foreign	
Continental Casualty Company	Foreign		1917	Foreign	
General Reinsurance Corporation	Foreign		1929	Foreign	
Gerling Global Reinsurance Company	Ontario	Gerling Global Group	1957	Foreign	
Great Lakes Reinsurance Company	Canadian		1952	Foreign	
Herald Insurance Company	Canadian	Crum & Forster of Canada Ltd.	1973	Foreign	
Mercantile and General Reinsurance Company Limited	British	Mercantile & General Reinsurance Group	1951	Foreign	

Company	Enabling legislation	Affiliation by group	Year licensed	Ownership	Canadian	Foreign
REINSURERS						
Mercantile and General Reinsurance Company of Canada	Canadian	Mercantile & General Reinsurance Group	1951	Foreign		
Munich Reinsurance Company	Foreign	Munich Reinsurance Group	1957	Foreign		
Munich Reinsurance Company of Canada	Canadian	Munich Reinsurance Group	1960	Foreign		
Nationwide Mutual Insurance Company	Foreign		1959	Foreign		
Netherlands Reinsurance Group N.V.	Foreign	Universal Reinsurance Group	1971	Foreign		
Nordisk Reinsurance Company Limited	Foreign	Universal Reinsurance Group	1947	Foreign		
North America Reinsurance Company	Foreign	Canadian Reinsurance Group	1945	Foreign		
The Reinsurance Corporation Limited	British		1953	Foreign		
The Reinsurance Corporation of New York	Foreign		1971	Foreign		
Societe Commercial de Reassurance	Foreign		1975	Foreign		
Skandia Insurance Company	Foreign		1949	Foreign		
Sphere Insurance Company	Foreign	Universal Reinsurance Group	1948	Foreign		
Storebrand Insurance Company Limited	Foreign	Canadian Reinsurance Group	1959	Foreign		
Swiss Reinsurance Company	Foreign	Universal Reinsurance Group	1949	Foreign		
Union Reinsurance Company	British	Universal Reinsurance Group	1941	Foreign		
Victory Insurance Company Limited						

APPENDIX K

(referred to in Chapter 27)

The following is an extract from the text of Report No. II submitted by Woods Gordon and Company to the Select Committee on Company Law, dated March 1977:

EXPLANATIONS OF ASSUMPTIONS AND PROCEDURES USED IN PREPARING THE COMPARATIVE FIVE-YEAR FINANCIAL STATEMENTS FOR THE AUTOMOBILE INSURANCE BUSINESS IN ONTARIO

GENERAL EXPLANATION

The income statement showing the operating results of the automobile insurance business in Ontario for the years 1971 to 1975 is labelled "estimated" because the individual companies do not disclose the specific revenues and expenses relating only to this segment of their business. As a result, it was necessary to use the information provided in the Reports of the Ontario and Federal Superintendents of Insurance together with the individual reports of the companies as a starting point for the accumulation of information. Because Lloyd's is required to report summary information only concerning its operations in Canada and since the impact of their results on any conclusions concerning the automobile insurance industry in Ontario would be minimal, the effect of the business Lloyd's writes has been excluded.

The notes which follow explain, by individual caption, the sources of the information and the assumptions made in allocating the various revenues and expenditures to automobile insurance in total and then to the Ontario segment of that business.

The provincial Superintendents of Insurance require each company doing business in Canada to supply income statement information analysed by the various lines of insurance which they underwrite. From the individual reports, a summary is made for all lines of business and their related expenses. This summary was used to determine the appropriate percentages for various expenses that should be applied to automobile insurance.

Net premiums written

Net Premiums Written is determined as follows:

	Direct premiums written
Plus:	Reinsurance assumed
Less:	Reinsurance ceded
Equals:	Net premiums written

The Annual Report of the Superintendent of Insurance for Ontario in Schedule XI details, by company, the amount of direct automobile premiums written in Ontario. From the individual company reports the amount of the total automobile insurance written, assumed, ceded and net written for all of Canada was determined and it was assumed that the percentage of net premiums written to direct premiums written for Ontario was the same as for Canada.

Net premiums earned

From supplementary data included in the individual company reports, the total for Canada of the net premiums earned on a 100% basis and the percentage difference between the net premiums earned on this basis and net premiums written for all automobile insurance business was obtained. This percentage was then applied to the net premiums written for Ontario automobile insurance, as determined in the preceding section, to arrive at the net premiums earned on a 100% basis for Ontario automobile insurance.

Since the figure for net premiums earned, as reported by the individual companies, is generally determined by discounting the unearned premiums by up to 20% to allow for deferred acquisition costs, it was necessary to calculate, from the individual company reports for all lines of insurance in all provinces, the difference between the net premiums earned on a 100% basis and the figure reported as actually earned. This difference, taken as a percentage of the net premiums earned on a 100% basis, was applied to the Ontario automobile insurance net premiums earned on a 100% basis to arrive at the net premiums earned for Ontario automobile insurance.

Net claims and adjustment expenses incurred

These expenses result from the following:

	Direct claims and adjustment expenses incurred
Plus:	Claims on reinsurance assumed
Less:	Claims on reinsurance ceded
Equals:	Net claims and adjustment expenses incurred.

To arrive at the net claims and adjustment expenses incurred for automobile insurance in Ontario, assumptions comparable to those made for net premiums written were made.

Net commissions incurred and general expenses

These two expenses for automobile insurance for all Canada were determined as percentages of their respective totals for all lines of business. These percentages were then factored by the percentage of direct automobile premiums written for Ontario over the total for Canada and multiplied by the total of each of net commissions incurred and general expenses as shown in the financial statements for all companies in the industry.

Investment income and other income and expenses

These revenues and expenditures were allocated on the basis of Ontario automobile net premiums earned as a percentage of total net premiums earned.

Income Taxes

As companies in the property and casualty insurance industry report income taxes on the “flow through” or “taxes payable” basis, there was no logical way to allocate income tax to one line of their business. Therefore, it is important to note that the profit or loss for each year is *before* income taxes.

APPENDIX L

(referred to in Chapter 27)

The following is an extract from the text of Report No. II submitted by Woods, Gordon & Co. to the Select Committee on Company Law dated March, 1977.

COMBINED FINANCIAL STATEMENTS PROPERTY AND CASUALTY INSURANCE INDUSTRY IN CANADA

This appendix deals with some aspects of the financial structure of the property and casualty industry in Canada under the following headings:

Procedures used to develop five-year financial statements for the property and casualty insurance industry in Canada

Five-year financial statements

Comments on the five-year financial statements

Statistical information

Comparative returns on investment with other industries

PROCEDURES USED TO DEVELOP FIVE-YEAR FINANCIAL STATEMENTS FOR THE PROPERTY AND CASUALTY INSURANCE INDUSTRY IN CANADA

Purpose

Since there is no summary of the financial results of the automobile insurance industry in Ontario prepared by the Department of Insurance, it was necessary to develop this information. However, since the individual companies involved in this industry do not segregate their reported results by individual line of business by province, it was necessary to devise a method to prorate the total financial information provided in order to develop a reasonable estimate of the industry's results for Ontario.

Matters relating to the “capacity” of the property and casualty industry are discussed in some detail elsewhere.¹ The capacity of the automobile insurance industry in Ontario cannot be considered in isolation but only in the context of the capacity of the total property and casualty industry in Canada.

Thus, as a starting point to develop financial results for the automobile insurance industry in Ontario and to measure the present and future capacity of the industry, it was necessary to develop financial statements for the entire property and casualty business in Canada.

Combined Financial Statements

Before reviewing the mechanics of the methods used to assemble the information necessary to prepare combined financial statements for all organizations for the five years ended December 31, 1971 to 1975, it is important to understand the organizations that are included, the sources of information and the accounting principles underlying the individual company statements.

(a) Definition of Organizations included in the Combined Financial Statements

Included in these combined financial statements are the financial position and operating results for all organizations:

1. Classified by the Department of Insurance as “other than life” companies.
2. Reporting to the Ontario Department of Insurance or the Canadian Department of Insurance under the classifications of Canadian, British and Foreign companies.

But do not include:

1. Provincially incorporated companies, other than Ontario companies, who do not operate in the province of Ontario. These companies are few in number and in size and have very little effect on the insurance business in Canada.
2. The government operated companies in British Columbia, Saskatchewan and Manitoba that underwrite auto insurance in those provinces.
3. Lloyd’s business activities in Canada.

¹ See chapter 27: The Insurance Companies, *supra*.

(b) Sources of Information

These financial statements have been assembled from the information available in:

1. The Annual Reports of the Superintendent of Insurance for the Province of Ontario.
2. Volumes I and II of the Reports of the Superintendent of Insurance of Canada.
3. The individual company reports filed with the Ontario Department of Insurance.

(c) Accounting Principles Appropriate to these Financial Statements

As discussed in Appendix M, the accounting principles followed by these companies in reporting to the Departments of Insurance, are not comparable to those followed by other commercial enterprises. For a more complete understanding of those differences, Appendix M should be read.

It is appropriate to note here however, that these combined financial statements are prepared on the basis of the statutory accounting principles followed by the individual companies. To assess their historic operating results on any other accounting basis would be very difficult and might be considered to be unfair since the basis used is the one imposed by law.

Specific Steps in the Accumulation of Financial Information

The Annual Reports of the Federal and Ontario Superintendents of Insurance generally summarize by company, the following:

1. Assets
2. Liabilities
3. Underwriting account
4. Surplus

The Ontario report summarizes information for only those companies incorporated in Ontario or licensed exclusively in Ontario. The Federal report summarizes the financial information by three separate groups of organizations: Canadian, British and Foreign.

As a first step the statements of these four separate groups of organizations were combined into one group and then the peculiarities of the reported and summarized information dealt with on a step by step basis to make the appropriate adjustments to the combined financial

statements. The following are the adjustments necessary in each of the five years in order to present the financial information on a consistent basis in total for all types of companies.

(a) Balance Sheet

1. Assets, Liabilities and Equity

- (a) Those companies reporting Federally that are classified as British and Foreign companies are required to exclude their marine insurance business from their property and casualty business. However, marine business is included in the summarized financial information provided for Ontario and Canadian companies. To be consistent we identified the British and Foreign marine business from another section of the Federal report and include it in these combined financial statements.
- (b) The Ontario report includes accrued investment income with other assets. Since it was considered to be a significant asset and it is segregated in the Federal reports, it was necessary to review the individual company reports for Ontario to summarize the accrued investment income and determine the adjustment required.
- (c) The Ontario report summarizes share capital, contributed surplus and surplus into one caption called "surplus for protection of policyholders". The details of each of these categories of shareholders' equity were obtained from the individual company reports to make the appropriate adjustments.
- (d) The summaries for Ontario and Canadian companies contain a separate category entitled general reserves. These reserves were analyzed for Ontario companies from their individual reports and it was determined that they consisted primarily of (1) reserves for reinsurance ceded to unlicensed companies, which were reclassified as another liability to be consistent with the treatment given in the summary of Canadian companies, and (2) additional investment reserves which were considered to be a type of surplus appropriation and, therefore, were included in surplus for a more complete basis on which to measure a return on the shareholders' investment.

The general reserves of the Canadian companies were analyzed and it was concluded that they were essentially contingency reserves and other appropriations of surplus. These reserves were reclassified and included in the combined surplus of these companies.

(b) Income Statement

1. The Federal report for British and Foreign Companies contains only a summarized underwriting account, investment income, income taxes paid and other income. However, from analyses of the individual reports of these companies, information about certain other expenses including investment expenses, non-resident taxes, losses on sales of investments and interest expense was obtained. From summaries of these data the appropriate adjustments to the various expense and revenue classifications were made.
2. As with the assets and liabilities, adjustments to various revenue and expense categories were made to include the marine business for British and Foreign companies.

(c) Statement of Surplus

1. Adjustments to this statement were also required, similar to many of those outlined above, including adjustments for the general reserves previously charged against surplus.
2. For each year it was necessary to reconcile the opening surplus position of the companies to the previous year's closing surplus as they were different in the summarized reports for Ontario and Canadian companies. Some of the changes resulted from minor adjustments of the prior year's closing position for changes in earnings or reserves because of errors made by the companies in filing their annual reports; however, no attempt was made to adjust prior year's income statements for these minor items. Most of these opening surplus adjustments arose as the result of new companies entering the industry or companies, previously licensed, leaving.

These types of adjustments have been categorized in the statement of surplus as "changes in the opening position".

3. As British and Foreign companies operate only as branches in Canada, they are not required, by the Federal Superintendent of Insurance, to provide details of changes in their head office account. In order to provide an annual reconciliation, it was necessary to calculate the head office account balance for those companies in total for 1970 and then carry this balance forward each year, to adjust it for any profit or loss incurred, to determine the closing balance (i.e. the difference between assets and liabilities) and to show the difference as additions to, or reductions from, the head office account for each year.

With the preparation of these five-year financial statements for all property and casualty companies in Canada, it was then practicable, together with other information, to prepare a summary of the estimated financial results of the automobile insurance industry in Ontario, the assumptions and calculations for which are provided in Appendix K .

PROPERTY AND CASUALTY COMPANIES

COMBINED BALANCE SHEETS

AS AT DECEMBER 31, 1971 to 1975

(in thousands)

ASSETS	1971	1972	1973	1974	1975
Investments at market value	\$2,622,626	\$2,943,299	\$3,344,312	\$3,434,156	\$4,043,528
Cash	108,929	144,873	122,478	161,895	195,016
Accrued investment income	34,656	40,110	46,163	52,364	65,175
Due from agents and premiums receivable	265,520	295,641	320,127	350,810	405,125
Other assets	166,464	183,998	216,963	259,164	309,219
Total assets	\$3,198,195	\$3,607,921	\$4,050,043	\$4,258,389	\$5,018,063
LIABILITIES					
Unearned premiums	\$ 843,313	\$ 936,441	\$1,024,757	\$1,128,815	\$1,302,915
Provision for unpaid claims and adjustment expenses	1,027,969	1,184,094	1,426,307	1,633,412	1,819,784
Additional policy reserves	11,823	13,124	14,507	17,215	21,359
Other liabilities	270,447	320,308	368,685	402,102	492,892
Total liabilities	2,153,552	2,453,967	2,834,256	3,181,544	3,636,950
EQUITY					
Capital stock	75,805	94,042	129,299	155,588	235,388
Contributed surplus	83,026	103,954	123,712	148,865	175,702
Surplus	319,519	345,815	353,216	284,002	323,739
Head office account	566,293	610,143	609,560	488,390	646,284
Total equity	1,044,643	1,153,954	1,215,787	1,076,845	1,318,113
Total liabilities and equity	\$3,198,195	\$3,607,921	\$4,050,043	\$4,258,389	\$5,018,063

PROPERTY AND CASUALTY COMPANIES
COMBINED SURPLUS
(Including Head Office Accounts)
FOR THE YEARS ENDED DECEMBER 31, 1971 TO 1975

	(in thousands)				
	1971	1972	1973	1974	1975
Opening surplus (or Head Office account)	\$709,804	\$ 885,812	\$ 955,958	\$962,776	\$772,392
Changes in opening position due mainly to deletion or addition of companies to this category		617	(881)	(881)	(7,545)
Adjusted opening position	709,804	886,429	955,077	961,895	764,847
Net income (loss) for year	118,855	116,451	58,777	(41,372)	114,031
	828,659	1,002,880	1,013,854	920,523	878,878
Deduct:					
Changes in reserves charged (credited) to retained earnings	(14,450)	(1,541)	15,217	58,693	21,152
Dividends to shareholders	10,709	21,949	16,770	14,203	12,989
(Additions to) reductions of Head Office account	(53,412)	26,514	19,091	75,235	(125,286)
	(57,153)	46,922	51,078	148,131	(91,145)
Closing surplus (or Head Office account)	\$885,812	\$ 955,958	\$ 962,776	\$772,392	\$970,023

PROPERTY AND CASUALTY COMPANIES
COMBINED INCOME STATEMENT
FOR THE YEARS ENDED DECEMBER 31, 1971 TO 1975

	(in thousands)				
	1971	1972	1973	1974	1975
Net premiums written	\$1,869,635	\$2,098,179	\$2,322,220	\$2,556,277	\$3,083,504
Net premiums earned	1,813,618	2,007,967	2,240,140	2,453,092	2,897,939
Net claims and adjustment expenses incurred	1,179,145	1,347,656	1,609,573	1,868,974	2,046,963
Net commissions incurred	300,677	329,658	364,378	401,084	474,112
General Expenses	339,147	365,877	401,867	460,040	512,640
	1,818,969	2,043,191	2,375,818	2,730,098	3,033,715
Underwriting loss	(5,351)	(35,224)	(135,678)	(277,006)	(135,776)
Investment income	158,097	184,383	212,596	247,276	278,577
Other income (expense)	531	727	1,250	(3,081)	(2,796)
Income (loss) before income taxes	153,277	149,886	78,168	(32,811)	140,005
Income taxes	34,422	33,435	19,391	8,561	25,974
Net income (loss)	\$ 118,855	\$ 116,451	\$ 58,777	\$ (41,372)	\$ 114,031

COMMENTS ON THE COMBINED FINANCIAL STATEMENTS OF PROPERTY AND CASUALTY COMPANIES FOR THE FIVE YEARS ENDED DECEMBER 31, 1971 TO 1975

The following is an explanation of some of the more important items contained in these financial statements.

BALANCE SHEET

ASSETS

Investments

Investments include:

- (a) Bonds
- (b) Stocks
- (c) Term deposits
- (d) Guaranteed savings certificates
- (e) Mortgage loans and sales agreements
- (f) Secured loans
- (g) Real estate (net of encumbrances)
- (h) Investments in subsidiaries, associates and affiliates.

Investments are shown at their market values as summarized in the various reports. Market value valuation of investments is required by regulatory authorities as part of assessing each company's solvency.

Investments in each of the five years is the largest single asset, accounting for approximately 80% of total assets.

Cash

Cash is maintained to meet the current obligations of the company, for example, payrolls, claims that are payable immediately, and other current operating expenses.

Accrued Investment Income

As the investment portfolio is a significant portion of the companies' total assets, there are substantial amounts of investment income which have been earned but not received by the companies. The proportion of accrued investment income to the size of the investment portfolio has increased because of increased interest rates.

Due from Agents and Premiums Receivable

The amounts due from agents are the premiums collected on behalf of underwriters that have yet to be forwarded by the agent or broker. Amounts outstanding for more than ninety days are, for statutory reporting purposes, considered to be uncollectible and thus, are not included.

Other Assets

Other assets comprise many items that cannot be directly attributed to the previous asset designations. The most common items are:

- (a) Deposits with reinsurers
- (b) Instalment premiums receivable
- (c) Other amounts due from reinsurers
- (d) The net book value of data processing equipment
- (e) Income taxes receivable.

LIABILITIES

Unearned Premiums

Unearned premiums are that portion of the premiums paid by the policyholders for which the coverage extends past December 31. For example, a one-year policy effective July 1, 1975 with a premium of \$200 would have \$100 of unearned premium outstanding at December 31, 1975. As discussed in Appendix M dealing with accounting principles, in reporting to regulatory authorities, companies are not allowed to defer as assets on the balance sheet those costs which are coincident with the writing of policies—i.e. commissions and premium taxes. Instead of deferring a portion of the acquisition costs, unearned premium can be recorded at an amount up to 20% less than the actual unearned premium. In the above example the unearned premium on this policy could be shown as \$80 rather than \$100.

Provision for Unpaid Claims and Adjustment Expenses

At any point in time companies have claims and expenses outstanding which are payable to the insured, third parties and others for the investigation and settlement of claims. The liability for claims consists of:

- (a) Claims that are known, settled and to be paid in the very near future.
- (b) Estimated liabilities for claims made but for which the final settlement has not been reached. Estimates of the actual dollar amount

for which the claim will be settled are based on trends of past experience.

- (c) An estimate for losses which have occurred, but for which no claim has yet been presented to the insurer.

In addition to these “direct” liabilities, there are other costs for which the payment has yet to be made, e.g. legal and adjusting expenses. As with claims costs, certain of the adjustment expenses are known since bills have been received but not yet paid; however, where the claim has not yet been settled or reported, adjustment expenses must be estimated based on the company’s knowledge of the claims experience and historical cost information.

Additional Policy Reserves

Additional policy reserves are required as extra protection on the more unusual and risky lines of business such as fidelity, surety, hail and nuclear insurance.

Other Liabilities

The major liabilities classified as “Other” on the balance sheet include:

- (a) Liabilities for income taxes,
- (b) Provision for business written but not recorded,
- (c) Amounts due to reinsurers,
- (d) Miscellaneous items—i.e. rent, utilities, employee deductions, etc.,
- (e) Deposits withheld from insurers, and
- (f) Reserve for reinsurance ceded with unlicensed companies.

Provision for Business Written but not recorded

British and Foreign companies in many instances will stop recording transactions in the middle of December, presumably to accommodate their non-resident head office in completing their annual financial statements. The Canadian Department of Insurance insists that the unearned Premiums relating to this unrecorded business be shown as an adjustment in reporting to the Superintendent. By including this amount, there is no effect on the earnings of the branch operation; however, it does reduce the surplus or head office account because the corresponding asset (cash or amounts due from agents) is not recorded in the same period. This represents an error in accounting for the net branch investment.

Reserve for Reinsurance Ceded with Unlicensed Companies

A reserve must be provided against business which has been ceded to unregistered companies. This reserve is meant to provide for the possibility that an unregistered company may not be able to meet its obligations and therefore the underwriter would have to meet all the claims of the insured. For purposes of the combined financial statements, these reserves have been included in "other liabilities".

EQUITY

Share Capital

Share capital represents the total of the shareholders' investment in common and preference shares at their par values for companies incorporated in Canada and Ontario.

Contributed Surplus

Contributed surplus represents the amount paid by the shareholders in excess of the par values of the common and preference shares.

Surplus

Included in surplus are the following:

- (a) Accumulated net earnings (losses)
- (b) Contingency and other reserves
- (c) Appropriations of surplus for various statutory reserves.

Head Office Account

As British and Foreign branch operations do not have to provide details of the changes in their head office accounts when reporting to the Federal Department of Insurance, other than reported net profits or losses, the remaining difference between their opening and closing head office account balances can only be shown as a net change.

Items included in the net change are:

- (a) Additions to the investment in the Canadian branch by head office.
- (b) Reductions in the investment in the Canadian branch by repatriation of funds by the head office.
- (c) Increases and decreases in the reserves which are charged or credited directly to the head office account.

- (d) The addition of new capital by new British or Foreign companies starting operations in Canada.
- (e) The complete withdrawal of capital by British or Foreign companies ceasing operations in Canada.

PROPERTY AND CASUALTY INSURANCE INDUSTRY IN CANADA STATISTICAL INFORMATION

Combined financial statements for the property and casualty insurance organizations operating in Canada and reporting to the Ontario and Federal Departments of Insurance for the years 1971-75 are summarized on pages 350 and 351. These statements consist of combined balance sheets and statements of income and surplus. A few comments concerning data contained in them follow:

Growth (\$ millions)

	1971	1972	1973	1974	1975
Net premiums written	\$1,869.6	\$2,098.2	\$2,322.2	\$2,556.3	\$3,083.5
Annual change		12.2%	10.7%	10.1%	20.6%
Total assets	\$3,198.2	\$3,607.9	\$4,050.0	\$4,258.4	\$5,018.1
Annual change		12.8%	12.3%	5.1%	17.8%
Shareholders' equity	\$1,044.6	\$1,154.0	\$1,215.8	\$1,076.8	\$1,381.1
Annual change		10.5%	5.4%	(11.4)%	28.3%

Net premiums written have increased more than \$1.2 billion from 1971 to 1975 or by about 65%. Total assets have increased an average of 12% a year or by more than \$1.8 billion in the four years from December 31, 1971 to 1975.

The investment by shareholders (equity) in the industry has increased by some \$336 million from \$1,045 million at December 31, 1971 to \$1,381 million at December 31, 1975 or at an average annual rate of 7.5% but the annual change has fluctuated widely from a decrease in 1974 of 11.4% to an increase in 1975 of 28.3%.

A comparison of net premiums written and average shareholders' equity for the years 1972 to 1975 indicates:

	1972	1973	1974	1975
Net premiums written	\$2,098.2	\$2,322.2	\$2,556.3	\$3,083.5
Average of opening and closing equity	1,099.3	1,184.9	1,146.3	1,229.0
Ratio (premiums/equity)	1.90	1.96	2.23	2.51

While no specific conclusions can be reached without considerably more investigation concerning the significance and implications of the

increase in the ratio of premiums written to equity, the trend is contrary to the one regulatory authorities would normally like to see as they assess the strength and stability of the industry.

The inadequate (7.5%) average annual growth in shareholders' equity, the increase in the number of policies of most kinds in force and inflation all contributed to this trend. The concern of regulatory authorities was likely tempered based on their assessment of the change in the mix of business written by the companies over the period and the trend for the industry to write shorter-term policies of all kinds. However, if the ratio of premiums written to equity continues to increase it will become the focus of growing concern possibly leading to the industry being forced to limit the total amount of insurance it writes.

Return on Average Equity

Equity includes share capital, contributed surplus, surplus and head office account. A simple average of the opening and closing equity balances has been used to calculate the percentage returns on equity represented by the combined operating results.

	1971	1972	1973	1974	1975
Net income (loss) after income taxes (\$ in thousands)	\$118,855	\$116,451	\$58,777	\$(41,372)	\$114,031
Annual return (loss) on equity	12.5%	10.6%	5.0%	(3.6)%	9.3%

The average return on equity over this five-year period is 6.5%.

Costs(\$ in millions)

The following costs of operation are compared to the net premiums earned to measure their impact on the losses before investment income and taxes (referred to by the industry as the underwriting loss) incurred in the five years.

	1971	1972	1973	1974	1975
Net claims and adjustment expenses	\$1,179.1	\$1,347.7	\$1,609.6	\$1,869.0	\$2,047.0
Percentage	65.0%	67.1%	71.9%	76.2%	70.6%
Net commission incurred	\$ 300.7	\$ 329.7	\$ 364.4	\$ 401.1	\$ 474.1
Percentage	16.6%	16.4%	16.3%	16.4%	16.4%
General expenses	\$ 339.1	\$ 365.9	\$ 401.9	\$ 460.0	\$ 512.6
Percentage	18.7%	18.2%	17.9%	18.8%	17.7%
Underwriting Loss	\$ (5.4)	\$ (35.2)	\$ (135.7)	\$ (277.0)	\$ (135.8)
Percentage	.3%	1.8%	6.1%	11.3%	4.7%

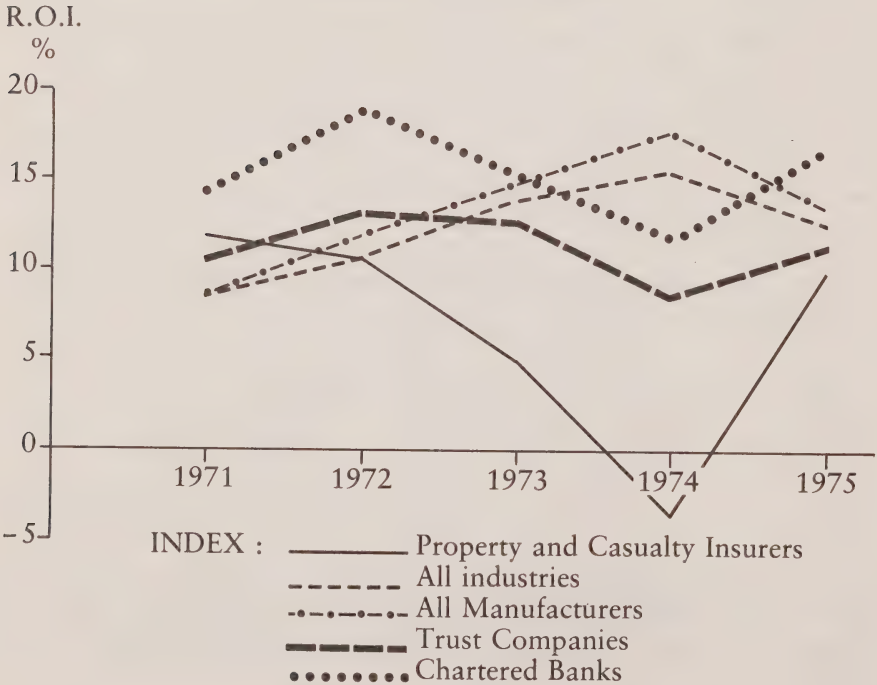
Over the five years, commission expense has remained a relatively constant percentage of net premiums earned. General expenses have fluctuated by only 1.1% in relation to net premiums earned over this period.

The underwriting losses incurred can be attributed to significant fluctuations in the claims costs and adjustment expenses in relation to net premiums earned. To break even on underwriting before investment income, it appears that a ratio of 65% claims and adjustment costs to net premiums is necessary.

Investment Income

Investment income includes interest, dividends, gains and losses on disposal of investments, and writedowns of investments due to a permanent decline in their value. Certain companies report investment income net of expenses directly related to the safekeeping and management of their investments. While the companies that report in this way appear to do so consistently each year, many companies include these expenses grouped with other administrative expenses. No detailed analyses of these expenses were made. However, it was determined that the practice followed by some companies of deducting these costs from their gross investment income would not affect any conclusions that might be reached concerning the investment practices and experience of the industry.

**RATE OF RETURN (AFTER TAX) ON INVESTMENT
OF VARIOUS INDUSTRIES**



	1971	1972	1973	1974	1975
Total investment income (\$ in millions)	\$158.1	\$184.4	\$212.6	\$247.3	\$278.6
Return on the average investment portfolio	6.5%	6.6%	6.8%	7.3%	7.5%

As the interest rates offered on commercial and government bonds have increased over this time period, so has the return on the investment portfolio but there is a definite lag between the increased yields available and those earned apparently because of the long-term investments in which the companies have placed their funds.

PROPERTY AND CASUALTY INSURANCE INDUSTRY IN CANADA—RETURNS ON EQUITY

The following table and the chart on the facing page compare the after-tax return on the shareholders' investment (equity) in the property and casualty industry with that achieved in other industries in Canada for the years 1971 to 1975.

RATE OF RETURN (AFTER-TAX) ON EQUITY

Industry	Years					Five Year Average
	1971	1972	1973	1974	1975	
Total all Industries	(1) 9.5%	10.6%	13.9%	15.3%	13.0%	12.7%
All Manufacturers	(1) 9.5	11.1	14.6	16.9	13.6	13.4
Chartered Banks	(2) 14.7	18.0	15.4	13.1	15.9	15.4
Trust Companies	(1) 11.0	11.9	11.8	8.2	10.6	10.6
Property and Casualty Insurers	(3) 12.5	10.6	5.0	(3.6)	9.3	6.5

Sources of Information:

- (1) Statistics Canada.
- (2) Bank of Canada Review (1971-74); Statistics Canada (1975).
- (3) Preceding section of this appendix.

These data clearly indicate that the property and casualty industry has earned a substantially lower return on its invested capital and surplus than any of the other broad industry groups in the five years, 1971 to 1975. In fact, it has earned, on average, less than half the rate of return of chartered banks and, at best, about 60% of the rate earned by the next lowest group, the trust companies. The property and casualty industry is the only industry that lost money in any year during the period. In 1974, property and casualty insurers had a negative return of 3.6%, while all the other groups earned a return on equity each year.

APPENDIX M

(referred to in Chapter 27)

COMPARISON OF THE ACCOUNTING PRINCIPLES USED IN THE PROPERTY AND CASUALTY INSURANCE INDUSTRY WITH THOSE FOUND IN OTHER COMMERCIAL ENTERPRISES

The 1974 research study of the Canadian Institute of Chartered Accountants, "Financial Reporting for Property and Casualty Insurers" has identified specific areas in which the insurance industry, for a variety of reasons, has traditionally not followed accounting principles which are generally accepted in other commercial enterprises. The reporting requirements of the Canadian and Provincial Departments of Insurance have stressed a solvency or liquidation approach to the valuation of assets and liabilities. Placing the emphasis on a company's ability to meet its present liabilities and those anticipated for policies still in force has led generally to a very conservative reflection of its earnings.

The following is an outline of the differences in accounting practices followed by property and casualty insurance companies and "generally accepted accounting principles" (GAAP) in other types of companies.

A. Non-Admitted Assets

Because the financial statements required by statute are designed to test the solvency of the companies, certain assets that would normally be shown for a "going concern" are termed "non-admitted" and are deducted from total assets and charged against either the company's current earnings or retained earnings. These assets are:

1. The excess of the book or carrying value of investments over the authorized market values,
2. Office furniture and fixtures and automobiles,
3. Amounts receivable from agents which have been outstanding for more than 90 days,
4. Instalment accounts receivable which are in arrears,
5. Intangible assets, such as goodwill,
6. Advances to directors, employees or agents,
7. Prepaid expenses and supplies,
8. Deferred premium acquisition costs.

In valuing an ordinary commercial enterprise on a going concern basis, all of these above-mentioned assets would have values depending upon the best estimates of their collectibility, usefulness, and expected lives, as the case may be.

1. Carrying Value of Investments

The type of investments and the amount that may be invested in a particular security by property and casualty insurance companies are defined by statute. Generally, companies can invest in government and government guaranteed bonds without restriction. Investments in corporate bonds, common and preferred stocks, guaranteed savings certificates and other like commercial investments are restricted to those investee companies that have net defined earnings levels and dividend payment records. Further, the total investment in any one company is limited to the lesser of (a) 10% of the insurance company's total assets and (b) 30% of the investee's common shares or 30% of the investee's total issued shares.

The Federal Department of Insurance publishes a book of market values at the end of each year. The British and Foreign companies must value their investments at these published values. Canadian companies use these published prices to determine the total market value at the year end. They then compare aggregate book value to the aggregate market value to determine any unrealized loss. The current years' shortfall is compared to the shortfalls in market value of the past three years divided by one-third. The lesser of these two amounts is used as the provision required to be included with non-admitted assets in respect of the excess of book value over market value. This procedure allows the Canadian companies to provide for shortfalls in the carrying value of their investments over a three-year period, which lessens the effect of periodic downturns in the bond and stock markets.

Ontario companies have the option of following the Canadian Department's procedures or revaluing to market value on an aggregate basis. The manner chosen must be consistently used from year to year.

These provisions for decline in the carrying value of investments are charged against retained earnings. As was indicated earlier, the emphasis in the statutory reporting is on the valuation of the balance sheet with little consideration given to the proper determination of the net earnings of a company.

The Research Study recommended that short-term investments be revalued at market on an annual basis and that the long-term or portfolio investments be valued on the "deferral and amortization" basis for fixed term securities and on a five-year moving average of market values for equity securities. The resulting adjustments to the carrying value of the

investments would be charged or credited to the income statement and not to retained earnings. This practice would, in the opinion of the Research Study, allow a truer measure of the operating efficiency of a company's investment practice.

2. Office Furniture, Fixtures and Automobiles

With the exception of the cost of computers which may be written off over five years, these items are not allowed as assets in the regulatory filings, therefore, most companies simply include their cost in expenses in the year in which they are acquired.

GAAP would require these purchases to be recorded on the balance sheet as fixed assets and written off as an expense in a systematic manner over the period of years it is estimated they will be economically useful to the company.

Thus, on an ongoing basis, the retained earnings of a company as reported to the regulatory authorities will be understated by the residual value of these fixed assets.

Some companies, however, do record these items as fixed assets and depreciate them. These companies include in non-admitted assets the undepreciated cost of the fixed assets as an annual adjustment in their statutory report. This adjustment, however, is to retained earnings. With this accounting treatment for fixed assets, there is no effect on the year-end balance of retained earnings between statutory and GAAP accounting; however, the statements of income in any particular year would be different.

3. Amounts due from Agents, Outstanding for more than 90 Days

Any unpaid accounts due from agents which have been outstanding for more than 90 days are included in non-admitted assets. The reasons for this arbitrary rule are:

- (a) To provide for bad debts that may exist,
- (b) To restrict the indirect financing of an agent by allowing him unreasonably long periods of time to settle his accounts.

GAAP would not follow such an arbitrary rule of thumb in providing for uncollectible accounts on an ongoing basis. Under GAAP, it would be necessary to review the amounts due from the agents individually to determine what amounts within these accounts would appear not to be collectible. GAAP requires that provisions for uncollectible accounts be charged against earnings.

4. Instalment Receivables in Arrears

For statutory purposes, once an instalment account is in arrears, it must be included as a non-admitted asset. This simply provides a 100% allowance for bad debts on this account. However, the underwriting account will recognize the earned portion of the premium while retained earnings are charged for the full amount of the premium deemed not to be collectible.

GAAP would require an assessment of those accounts in arrears in order to determine the amount estimated to be uncollectible; the necessary charge would be against income.

5. Intangible Assets

The Departments of Insurance do not recognize intangible assets, such as goodwill, as having any monetary value and they, therefore, require such items to be included in non-admitted assets. This practice is consistent with the concept of liquidity valuation of the balance sheet.

However, GAAP would record intangible assets, such as goodwill, on the balance sheet where the company was considered to be a going concern and the assets had a continuing value. No attempt will be made here to describe the changes in accounting theory which have recently evolved in accounting for business combinations, from which goodwill generally arises, other than to state that goodwill has to be charged against earnings in a regular manner over a number of years.

6. Advances to Directors, Employees or Agents

Loans and advances to directors, employees or agents are strictly prohibited by the Act and, therefore, have to be included in non-admitted assets.

These loans and advances would be considered assets under GAAP, to the extent they are collectible, even though they are not permitted by statute.

7. Prepaid Expenses and Supplies

Prepaid expenses and supplies are considered to have no liquidation value and, therefore, are included in non-admitted assets.

On a going concern basis, GAAP recognizes that certain expenses and supplies have economic values that continue beyond fiscal year-ends; therefore, to achieve a proper matching of revenues and expenditures, the unused portion of these costs would be carried as an asset on the balance sheet and charged against income on a basis which reflects their actual use.

8. Deferred Premium Acquisition Costs

Premium acquisition costs are those expenses incurred in obtaining the direct premium business. The obvious costs involved in the writing of a policy are commissions paid to agents and premium taxes. These costs are expensed in the period in which the business is written.

On the other hand, GAAP would consider it necessary to defer that portion of the premium acquisition costs that relate to the unearned premium also deferred on the balance sheet. This would allow a proper matching of those costs associated with acquiring the business, with the income earned thereon.

The method of recognizing premium income and the discounting thereof is discussed in section B below:

B. Unearned Premiums

Insurance companies defer the income recognition of that portion of each premium for which the policy term extends beyond the fiscal year end. As mentioned earlier, premium acquisition costs are not deferred in a like manner, thus not allowing a matching of these costs with the revenues generated.

Department practice has allowed the companies to discount their unearned premiums up to 20% at the year-end. The discounting of unearned premiums does not always offset the actual premium acquisition costs that would be otherwise deferred and, therefore, earnings are distorted.

GAAP would require the deferment of 100% of the unearned premiums and, as noted above, a deferral of the premium acquisition costs relating to the unearned premiums.

C. Reserve for Reinsurance Ceded to Unregistered Companies

Where an insurance company cedes part of its business written to an unregistered company, the insurance company must provide additional reserves in a prescribed manner to provide for the possibility of the unregistered reinsurer being unable to meet its obligations on claims arising from this ceded business. Since the Department of Insurance has no control over the unregistered company, it requires that its licensee encumber its own capital position to provide for the possible default of the unregistered company.

GAAP would require an analysis of the business reinsured in this manner and a review, to the extent possible, of the reinsurer to determine what provision, if any, is needed for amounts due from that other company.

D. Additional Policy Reserves

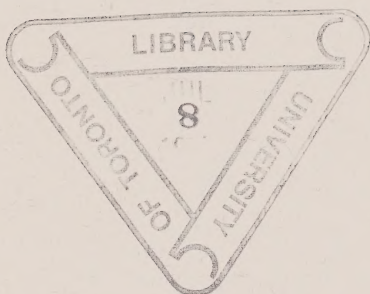
For statutory reporting purposes, the companies are required to provide policy reserves on certain lines of business beyond the normal provisions for unpaid claims and adjustment expenses. The lines of business affected are fidelity, surety, group accident and sickness, nuclear and hail. Various percentages are applied to the net policies in force to calculate each company's requirement to provide these additional reserves. As a result, earnings and retained earnings are reduced.

If GAAP applied to these insurance companies, these statutory reserves would probably be eliminated if it could be demonstrated that the provision for unpaid claims was sufficient to meet the present value of liabilities on these lines of business.

E. Income Taxes

The insurance industry follows the practice of providing for income taxes only as they become payable, i.e. on the "flow through" basis. This basis essentially provides taxes as an expense of the company only to the extent there is taxable income and taxes payable for that year. This method does not take into account those differences between the income reported on the company's financial statements and the taxable income as determined and reported to the taxation authorities in accordance with the tax act and regulations. The major differences between these two reported incomes relate to deferred premium acquisition costs and the discount against unearned premiums, capital cost allowances and depreciation, and unrealized investment gains and losses.

GAAP would require the "allocation" method of accounting for income taxes. Under this method, income taxes are provided on the income earned as reported on the financial statements, with taxes currently payable (as calculated on taxable income) segregated from taxes that may be deferred for payment in future years.



3 1761 1146022 8

